



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

% Reserved on : 01.11.2025
Pronounced on : 03.11.2025

+ **CRL.A. 861/2017**

STATEAppellant

Through: Mr Pradeep Gahalot, APP for State
with SI Pankaj Kumar PS Jyoti
Nagar, New Delhi.

versus

MOHD ZAHIDRespondent

Through: Mr. Satish Kumar Tripathi, Advocate
with respondent in person.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been preferred by the appellant/State under Section 378 Cr.P.C. seeking setting aside of the impugned judgment dated 25.01.2016 passed by the learned Additional Sessions Judge, North-East District, Karkardooma Courts, Delhi, in proceedings arising out of FIR No. 337/2011 registered at P.S. Jyoti Nagar, whereby the Trial Court acquitted the respondent of the charge under Section 308 IPC. Notably, the leave to appeal was granted vide order dated 07.09.2017.

2. The case of the prosecution, in brief, is that on 20.08.2011 at about 8:45 p.m., the respondent had a quarrel with the injured and struck him on the head with a hammer with such intention or knowledge and under such circumstances that, if by that act death had been caused, he would have been



guilty of culpable homicide not amounting to murder. The injured was removed to GTB Hospital by the PCR van and was initially declared unfit for statement. On the next day, after being declared fit, his statement was recorded. Consequently, the respondent was arrested, and a hammer was allegedly recovered from his house. Upon completion of investigation, the charge-sheet was filed, and the case was committed to the Sessions Court, where a charge under Section 308 IPC was framed. The respondent pleaded not guilty and claimed trial.

3. The prosecution examined 10 witnesses in support of its case. The key witnesses are the injured/PW-2, who deposed that the respondent assaulted him with an iron hammer; the brother of the injured/PW-3, who claimed to have witnessed the incident; and PW-10/SI *Vivek Malik*, the I.O. of the case, who deposed as to various aspects of the investigation including visiting the spot of the incident, arresting the respondent, and the recovery of a hammer from his house. As for the other witnesses, PW-4/HC *Jitender Pal* stated that on receiving information regarding an injured person lying near Yasin Hotel in Gali No. 1, Kardam Puri, he along with PCR staff went to the spot where they found the injured lying in a semi-conscious state on the road and they shifted him to GTB Hospital; PW-5/ASI *Ram Niwas* proved recording of DD No. 35A regarding a quarrel; PW-7/Ct. *Ajay Malik* accompanied the I.O. during the initial investigation and deposed about reaching the spot, preparation of the *rukka*, and subsequent procedural steps; PW-1/HC *Rishi Pal* proved registration of FIR No. 337/2011; PW-6/HC *Sunil Kumar*, MHC(M), proved the *malkhana* entries regarding deposit of two sealed parcels by the concerned I.O. and clarified that the parcels were not sent to FSL; PW-8/Dr. *P. K. Saha* identified the signatures of the examining doctor



on the MLC of the injured prepared at GTB Hospital; and PW-9/Dr. *Virendra* proved the subsequent medical opinion declaring the injuries sustained by PW-2 to be grievous in nature.

Additionally, *Nadeem*, cousin of the injured, was examined as a Court Witness (CW-1). He stated that upon being informed of a quarrel involving *Tanseef*, he reached the spot and found him lying unconscious with a head injury, made a PCR call, and helped in shifting him to the hospital. He deposed that the injured later regained consciousness and told him that someone had hit him from behind with an object, but did not name the assailant.

4. PW-2/*Tanseef*, the injured, deposed that on 20.08.2011 at about 8:30 p.m., while going to offer *namaz* with his brother *Tanveer*, the respondent objected to his passing by and threatened him. The witness stated that the respondent thereafter went inside his house, returned with a *hathora* (hammer), and struck him on the head, after which he fell unconscious and later regained consciousness only at GTB Hospital. He identified his blood-stained T-shirt as the one seized by the police.

In cross-examination, he stated that only he and his brother were present at the time of the incident, denied any prior quarrel with the respondent, but admitted that an FIR had been lodged against him on the complaint of the respondent's sister, which he described as a counterblast to the present case. When recalled by the Court for further examination, he reiterated that he became unconscious immediately after the incident and stated that he could not recall when his statement was recorded by the police.



5. PW-3/*Tanveer*, brother of the injured, deposed that he and *Tanseef* were going to the *masjid* when the respondent warned *Tanseef* not to pass “through” his house. *Tanseef* ignored the warning, whereafter the respondent went inside, brought out a hammer, and struck *Tanseef* on the head. The witness stated that his brother fell unconscious, and he ran away in fear; someone from the locality informed the PCR, which took *Tanseef* to GTB Hospital. The next day, he joined the investigation and identified the respondent, leading to his arrest and recovery of the hammer.

In cross-examination, he stated that *Tanseef* was still unconscious when he saw him at the hospital the next day. He admitted that no public person was associated during the arrest or recovery and that he had not seen any blood on the recovered hammer. He stated that an FIR had been registered against his brother as a counterblast to the present case. When recalled by the Court for further examination, he stated that he had run to his uncle’s house after the incident, did not inform his parents immediately, and had only gone to the hospital later that night.

6. PW-10/SI *Vivek Malik*, the Investigating Officer, deposed that on receiving DD No. 35A about a quarrel, he reached the spot with *Ct. Ajay Malik* but found no eyewitness. At GTB Hospital, he found *Tanseef* admitted and unfit for statement. The MLC (Ex. PW-2/A) was collected, and the *rukka* was prepared on the basis of available information, leading to registration of the FIR. The statement of *Tanseef* was recorded the next morning after the doctor declared him fit. The injured’s blood-stained T-shirt was seized, and later, at the instance of *Tanveer*, the respondent was arrested and a hammer allegedly used in the assault was recovered from his house.



In cross-examination and in reply to Court questions, *SI Vivek Malik* admitted that although the injured's address was mentioned in the MLC, no attempt was made to contact his family that night. He also stated that no public witness was joined during the arrest or recovery and that the recovered hammer bore no visible bloodstains.

7. CW-1/*Nadeem*, cousin of the injured, was examined as a Court Witness. He deposed that on the date of the incident, at about 8:30 p.m., while he was sitting in his shop, a child informed him that a quarrel had taken place involving his cousin *Tanseef*. He immediately went to Gali No. 1, Kardam Puri, where he found *Tanseef* lying unconscious with a head injury. He made a PCR call and helped the police officials in shifting the injured to the PCR van. He stated that family members of *Tanseef* were present at the spot, and that he, along with *Sh. Nafees* (father of the injured), *Shahrukh* (brother of the injured), and some neighbours, followed the PCR van to GTB Hospital. He remained at the hospital till about 10 p.m. and then returned home while his uncle and brother stayed back. He did not meet any police officer in the hospital and was not contacted later for recording of his statement.

He further deposed that while in the hospital, the injured regained consciousness and told him that someone had hit him from behind with an object but did not name the assailant. He reiterated that *Tanseef* was in a semi-conscious condition at the time and that he had given him water. He clarified that he did not inform other family members before making the PCR call but told his uncle *Sh. Nafees* afterward. He also stated that he did not notice whether *Tanveer* (brother of the injured) was present at the spot, as there was a crowd. In response to Court questions, he confirmed that he



left the spot before the arrival of the local police and reached GTB Hospital around 9:15-9:30 p.m. He denied having met any police official there but said that *Tanseef* told him later that police personnel had come and recorded his statement.

8. The learned APP for the State submits that the ocular testimony of the injured is consistent and corroborated by the medical evidence on record, which shows a grievous head injury inflicted by a hammer on a vital part, thereby establishing intention or knowledge sufficient to constitute the offence under Section 308 IPC. He submits that the eye-witness testimony of the brother of the injured (PW-3), as well as the recovery of the hammer from the house of the respondent, supports the prosecution case.

9. Learned counsel for the respondent, on the other hand, argues that the prosecution failed to establish the occurrence of the incident and the respondent's role beyond reasonable doubt. It is contended that there are inconsistencies in the site of occurrence as reflected in DD No. 35A, the site plan, and the testimonies of the key witnesses. He further submits that the conduct of the brother of the injured/PW-3 was unnatural and that contradictions existed as to his presence at the spot and at the hospital. It is further urged that, in light of the discrepancies regarding the time of arrest and recovery of the hammer across witnesses, the alleged recovery of the weapon in question is rendered doubtful and cannot be relied upon. It is further argued that the investigation was perfunctory, as evident from the fact that no independent public witnesses were examined despite the incident having occurred in the presence of several residents of the locality.

10. I have heard the learned counsels for the parties and gone through the record. It is apparent that the first point requiring scrutiny is the location of



the alleged incident. The initial DD entry recorded the place as near Yasin Hotel, while the site plan prepared by the I.O. shows the spot of the incident to be in front of the respondent's house. This discrepancy, coupled with PW-4 stating that the injured was found near Yasin Hotel, casts uncertainty over the exact place of occurrence. No independent witness residing in the *gali* was examined to confirm the exact place of the assault, despite it being plainly evident on a perusal of the record that several people had gathered at the spot.

11. The next aspect that requires deliberation is the presence and conduct of the brother of the injured (PW-3). Though he claimed to be accompanying the injured at the time of the incident, his reaction of running away and not immediately informing his family or the police is inconsistent with the normal human response expected of a real brother witnessing such an incident.

12. The third aspect relates to the arrest of the respondent and the alleged recovery of the hammer. The I.O. has recorded the time of arrest as 3:40 p.m. on 21.08.2011, whereas the brother of the injured/PW-3 has deposed to the contrary, suggesting that the arrest of the respondent and recovery of the iron hammer from his house took place much earlier in the day. This casts a shadow of doubt on the alleged recovery of the weapon, and the fact that there is no forensic evidence on record to link the concerned hammer to the injuries sustained by PW-2 further weakens the evidentiary value of the alleged recovery.

13. While it is true that the testimony of an injured witness generally carries greater evidentiary value, it cannot be accepted mechanically or in isolation. In the present case, the testimony of the injured is not in full



harmony with that of his brother, the I.O., or CW-1. Their versions differ on the location of the incident, the timing of events, and the sequence of police action. The prosecution also failed to examine any independent public witness, though the incident was alleged to have taken place in a densely-populated locality. These variations and omissions, read with the admitted background of animosity between the parties, cumulatively create a reasonable doubt about the veracity of the prosecution case. The benefit of doubt must, therefore, be given to the respondent.

14. At this stage, it is apposite to note that an order of acquittal carries with it a double presumption of innocence and the benefit of doubt extended to the respondent in the present case is not liable to be interfered with unless the Trial Court's view is perverse. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage, after his acquittal by the Trial Court, is settled. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed as under:

"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows: (SCC p. 454, para 25)

'25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to



be disturbed only by thorough scrutiny on the accepted legal parameters.’”

15. The decision of the Supreme Court in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, also categorically holds that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of accused persons in an appeal against acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189; (2010) 3 SCC (Cri) 1179], this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

*‘...
13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42; (1933-34) 61 IA 398; AIR 1934 PC 227 (2)], the Privy Council observed as under: (SCC Online PC: IA p. 404)*

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’”

*...
(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*



(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’’

16. Considering all of the aforesaid, this Court finds the contentions put forth by the prosecution not convincing enough to warrant reversal of the impugned judgment, and the same is accordingly upheld.

17. The present appeal is dismissed.

18. The personal bond furnished by the respondent stands cancelled and his surety is discharged.

19. A copy of this judgment be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 03, 2025

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