



2026:DHC:1264



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

%

Reserved on: 19th November, 2025

Pronounced on: 13th February, 2026

+

CRL. A.514/2025

STATE

.....Appellant

Through: Mr. Utkarsh, APP for the State with
SI Ekta.

versus

SANJEEV @ BABLI

S/o Sh. Jawala Singh

R/o H.No.385/328,

Near Purani Chaupal,

Village Rithala, Delhi.

.....Respondent

Through: Mr. S. P. Sharma and Mr. Vinu
Balghuher, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Criminal Appeal under Section 378(1) of Cr.P.C. has been filed against the Judgment dated 12.09.2016 whereby the Learned ASJ set aside the Order of Conviction and Sentence dated 21.12.2015 by the Learned MM and Acquitted the Respondent for the Offence under Section 326/341/506 IPC in case FIR No.86/1998 P.S. Mangol Puri.

2. *Brief facts* of the case are that the Complainant Bansi made a Complaint to the Police stating that on 23.01.1998 at about 9:15 P.M., while he was coming back home after finishing his daily business, the Respondent Babli along with his two associates, was standing at Chaupal. The Respondent challenged the Complainant and when he objected, Respondent



started spitting venom at him. In the meanwhile, one of the associates caught hold of the Complainant, while the Respondent Babli took out a pointed object from his pocket and inflicted injuries on his arms and left ear. When he tried to save himself, the Respondent threatened to shoot him.

3. On his Complaint, **FIR No. 86/1998** was registered at Police Station Mangol Puri. The investigations were conducted by I.O SI Rajesh Rathi. During the investigations, the MLC was collected. The Statements of Eye Witnesses were recorded. Accused/Respondent was arrested on the next day i.e. 14.01.1998. His Disclosure Statement was recorded and this led to the recovery of the Weapon of Offence i.e. *Ustra* from near the bushes at the Rithala Bus Stand. On completion of the investigations, Chargesheet was filed in the Court.

4. The **Charges** under Section 326, 341 and 506 IPC were framed against the Accused/Respondent.

5. The Prosecution in support of its case examined **Nine Witnesses** in all.

6. **PW4 Bansi** was the Complainant who proved his Complaint as Ex. PW4/A. The opportunity was given for his Cross-Examination which was not availed by the Accused. Thereafter, an Application under Section 311 Cr.P.C. was filed on behalf of the Respondent on 24.04.2007 and PW4 was recalled for Cross-Examination. Pertinently, he in his Cross-Examination recorded on 12.04.2012, denied the identity of the Respondent.

7. **PW5 Sh. Mahender Singh**, Home Guard in Delhi Police was an Eye Witness, but he completely denied the incident. The other Eye Witness was **PW9 Matu Singh** also turned completely hostile and denied being the Witness to the incident.



8. **PW1 HC Pawan Singh** had recorded the FIR Ex. PW1/A.
9. **PW2 HC Ram Prasad** along with **PW3 HC Havel Singh**, initial I.O. had reached the place of incident, where Complainant Bansi was lying in injured condition. He was taken to the DDU Hospital, where he was medically examined. HC Havel Singh prepared the *Tehrir* and the FIR was registered.
10. **PW6 Dr. Anurag**, CMO, DDU Hospital deposed that he had examined the injured on 23.01.1998 with the alleged history of Assault.
11. **PW7 Const. Raj Kumar** had accompanied the **second I.O. SI Rajesh Rathi** to the house of the Complainant who had produced one Jacket of black colour with a cut mark on the left arm. The Jacket was seized and sealed by the I.O. The statements of the Public Witnesses were recorded. The Respondent was thereafter, apprehended and arrested by the I.O. and PW7. He further deposed that pursuant to the Disclosure Statement of the Respondent, the *Ustra* was recovered from the bushes near Rithala Bus Stand. On completion of investigations, the Chargesheet was filed in the Court.
12. **PW8 D.K. Chhabra**, Record Clerk, Jaipur Golden Hospital had proved the MLC of the injured as Ex. PW8/A.
13. The **Statement of the Accused** was recorded under Section 311 Cr.P.C, wherein he pleaded his innocence.
14. The **Learned M.M. in his detailed Judgment dated 28.02.2015** observed that the Complainant had been absolutely consistent in his examination-in-chief and had deposed about the incident and also identified the Respondent. However, on the Application under Section 311 Cr.P.C., the Complainant was recalled for Cross-Examination after nine years and



interestingly in his Cross-Examination, he completely resiled from his Testimony in examination-in-chief. The Learned M.M. observed that since the Complainant was absolutely consistent in his examination-in-chief, his subsequent resiling in Cross-Examination, and that too, after nine years was of no consequence. Reliance is placed on Vinod Kumar vs. State of Punjab Crl. Appeal 554/2012 Supreme Court and Swaran Singh vs. State of Punjab (2000) 5 SCC 668. Considering the Testimony of the Complainant and other witnesses, the Respondent was **convicted and sentenced under Section 326/341/506 IPC.**

15. Aggrieved by the Judgment and the Sentence, **Criminal Appeal No. 6/16 (New Cr. Appeal No. 49743/16)** was filed by the Respondent before the Learned Sessions Judge, who observed that though PW4 Bansi had supported the case of the Prosecution in examination-in-chief and the same can be considered ignoring his Cross-Examination, but the Prosecution had examined two other Eye-Witnesses, namely, **PW5 Mahender Singh and PW9 Matu Singh**, but they both had failed to support the case of the Prosecution. Moreover, there was another *injured Rajesh* who was neither made a Witness nor examined. There were in all six Public Witnesses, out of which only two Independent Eye Witnesses have been examined, who also failed to support the case of the Prosecution.

16. Further, where in a case, the Public Witnesses turned hostile, it is imperative to examine the I.O., to explain the statements of such Witnesses. Unfortunately, I.O. SI Rajesh Rathi has not been examined by the Prosecution. Moreover, the *Ustra* was allegedly recovered at the instance of the Respondent, but no opinion was taken if the *Ustra* could cause the injuries suffered by the Complainant. It was also not sent to FSL for



examination for blood, etc. Therefore, the benefit of doubt was extended to the Respondent, who was Acquitted.

17. Aggrieved by the said Acquittal, **the present Appeal has been preferred by the State/Appellant.**

18. The *grounds of Appeal* are that the Testimony of PW4 Complainant who had identified the Accused by name and described the incident in detail in his Complaint Ex. PW1/A, has been completely overlooked. Not much significance could have been attached to his turning hostile in the subsequent Cross-Examination. Moreover, the Testimony of the Complainant got corroborated by the MLC Ex. PW6/A, which detailed the injuries suffered by him and certified it as *grievous in nature*.

19. Furthermore, the Trial Court did not appreciate that I.O. SI Rajesh Rathi could not be examined because of his demise. The original I.O. PW3 HC Havel Singh had proved all the material particulars and the documents. No prejudice was caused by non-examination of subsequent I.O. SI Rajesh Rathi. Reliance is placed on *Krishna Mochi vs. State of Bihar* (2002) 6 SCC 81.

20. Also, the recovery of the *Ustra* at the instance of the Accused, has also not been considered. The Accused/Respondent had not challenged the testimony of PW6, the Medical Expert in the Cross-Examination, nor was any suggestion given that the *Ustra* could not have caused the injuries suffered by the injured. Merely, because the knife was not sent to FSL, cannot be considered as fatal to the case of the Prosecution. Reference is made to *Praveen Kumar vs. State* Crl.A. 247/2006 Delhi High Court.



21. It is, therefore submitted that the Impugned Judgment of Learned ASJ acquitting the Respondent be set aside and the Judgment of the Learned M.M. convicting and sentencing the Respondent, be restored.

22. The **Respondent in his response**, had submitted that the conclusions drawn by the learned ASJ were cogent and well explained and did not merit any interference.

Submissions heard and record perused.

23. The case of the Prosecution hinges on the Testimony of the Complainant Bansi who in his Testimony as PW4, had corroborated his Complaint Ex. PW4/A and had deposed that on the date of incident at about 09:15 P.M. while he was going back home, he was accosted by the Respondent along with his associates, who had caught hold of him and the Respondent had inflicted injuries with a sharp edged weapon. The Complainant, though had been consistent in his Testimony, but he could not be Cross-Examined on account of Ld. Counsel not available on behalf of the Respondent.

24. Subsequently, after nine years on an Application under Section 311 Cr.P.C. the Complainant was recalled for Cross-Examination. Pertinently, he denied that Respondent was the Assailant and he could not see him as it was night and dark and there was a wedding taking place in the vicinity.

25. The Learned M.M. and the Learned ASJ noted that where a Witness who is called for cross-examination after a gap of time and fails to support the Prosecution case in Cross-Examination, then the examination-in-chief cannot be overlooked and can be the basis of Conviction, as held by the Apex Court in Khurji vs. State of M.P. 1991 CrI. G.2654.



26. However, the Learned ASJ was right in observing that the sole Testimony of the Complainant especially when he failed to support the case of the Prosecution in Cross-Examination, made it imperative to also consider the surrounding circumstances. It has been rightly observed that there were six Eye-Witnesses to the incident, but only two Independent Witnesses were called and they too completely failed to support the case of the Prosecution. The other four Witnesses should have been examined to lend some corroborative coherence to the Testimony of the Complainant.

27. It is also rightly observed that where the Witnesses are hostile or do not support the case of the Prosecution, it becomes imperative for the I.O. to explain if the statements of such Witnesses had been recorded correctly during the investigations. Unfortunately, the I.O. could not have been examined, even if on account of his demise, the fact remains that there was no explanation if the statements of the two Eye Witnesses who failed to support the Prosecution case, were indeed recorded correctly and if they were actually the eye witnesses of the incident. The two Eye Witnesses not supporting the case of the Prosecution, creates a doubt about the entire Evidence, especially when the incident took place in the night at a spot where there was lot of hustle-bustle of the wedding.

28. It can also not be overlooked that the *Ustra* had been allegedly recovered on the next day at the instance of the Respondent, but it was admittedly recovered from the bushes in an open space, near Rithala Bus Stand. It is an open area accessible to all and therefore, the Recovery cannot be considered to be absolutely reliable.

29. The Learned ASJ has rightly noted that even the Expert Opinion about the *Ustra* being the Weapon of Offence, has also not been obtained.



2026:DHC:1264



The Learned ASJ has rightly given the benefit of doubt to the Respondent and had Acquitted him *vide* the Impugned Judgment dated 12.09.2016.

There is no merit in the present Appeal, which is hereby, dismissed.

30. The Appeal stands disposed of accordingly along with the pending Application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 13, 2026/VA