



2025:DHC:5108



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 01.07.2025*+ **CRL.A. 178/2025 & CRL.M.(BAIL) 301/2025,**
CRL.M.(BAIL) 544/2025**RAM @ HIMANSHU (IN CUSTODY) THROUGH**
PARIOKAR MS. KUSHUM LATAAppellantThrough: Mr. Siddharth Yadav and Ms.
Meenu Yadav, Advocates

versus

STATE NCT OF DELHIRespondentThrough: Mr. Naresh Kumar Chahar,
APP for State with Mr.
Chandrakant Dahiya and Mr.
Vaibhav Chechi, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of this criminal appeal, the appellant seeks setting aside the judgment of conviction dated 12.11.2024 and order on sentence dated 04.01.2025 passed by the learned Additional Sessions Judge-5 (South-East), Saket Courts, New Delhi [hereafter '*Trial Court*'] in SC No. 464/2021, for the commission of offence punishable under Section 308 of the Indian Penal Code, 1860



[hereafter '*IPC*'].

2. Briefly stated, the facts of the present case are that on 11.07.2021 at around 8:30 PM, at Main Market, Gautam Puri, near Valmiki Mandir, Delhi, the appellant had caused injuries to the forehead and occipital region of victim Dinesh Kumar with a chopper (meat-cutting knife), exposing the bone calvaria. Following the incident, an FIR bearing no. 417/2021 had been registered at Police Station Badarpur, Delhi and investigation had been carried out. The statements of witnesses had also been recorded, and after completion of investigation, chargesheet had been filed for offence under Section 307 of IPC. Charges were framed by the learned Trial Court against the appellant for offence under Section 307 of IPC.

3. After the conclusion of the trial, the learned Trial Court convicted the appellant for the offence punishable under Section 308 of IPC and sentenced him to undergo rigorous imprisonment for five years along with payment of a fine of ₹60,000/-. In default of payment of fine, the appellant was directed to undergo simple imprisonment for six months.

4. The learned counsel for the appellant argues that the learned Trial Court failed to appreciate that the injured and his family members are interested witnesses, whose testimonies cannot be fully relied upon. In the absence of any independent eye witness, the conviction of the appellant is unsustainable. It is further argued that the alleged incident took place at a crowded public place during



daylight, yet no independent witness was produced by the prosecution. The learned counsel submits that the learned Trial Court also ignored the statement of DW-1, who deposed that the appellant was at his residence on the day of the incident, stayed overnight, and left only the next morning. He further contends that the DNA report does not support the prosecution's case, as no DNA profile could be generated from the face mask, earthly material, chopper, or blood FTA card due to degradation and inhibition. It is also argued that although the victim's family has alleged that the appellant had been threatening them after the victim's daughter Jyoti refused his marriage proposal due to his criminal background, there are material contradictions in the statements of the victim Dinesh, his daughter Jyoti, his son Vishal, and his wife Mamta. The learned counsel points out that PW-2 Vishal stated during cross-examination that his father told him on 12.07.2021, after regaining consciousness, that the appellant had assaulted him. However, the victim himself stated during cross-examination that he remained unconscious for 2-3 days after the incident. Lastly, it is argued that the learned Trial Court failed to consider the testimony of PW-11, IO SI Vivek Gautam, who deposed that on the date of the incident, Vishal informed him at AIIMS Trauma Centre that the appellant had attacked his father, but later gave a contradictory statement at the crime spot. Hence, the appellant is entitled to be acquitted.

5. The learned APP for the State, on the other hand, argues that no public person agreed to give a statement to the police, and by the



time they reached the spot, most of the public had already dispersed. He contends that the non-joining of public persons or independent eyewitnesses, though unexplained by the prosecution, cannot be a ground for acquittal of the accused. It is further submitted that the accused did not raise the defence of alibi during the cross-examination of prosecution witnesses. Moreover, DW-1 failed to produce any evidence to support his claim that the accused was present at his residence at the time of the incident. During cross-examination, DW-1 also admitted that he never approached the police to inform them that the accused was with him at the relevant time, and therefore, his testimony does not inspire confidence.

6. This Court has **heard** arguments addressed by the learned counsel for the appellant and learned APP for the State, and has perused the material on record.

7. In a nutshell, the case of the prosecution is that on 11.07.2021, at around 8:30 PM, at Main Market, Gautam Puri near Valmiki Mandir, Delhi, the appellant had assaulted the victim, Dinesh Kumar, with a chopper (meat-cutting knife), thereby causing grievous injuries to his forehead and occipital region, exposing the bone calvaria. Aggrieved by his conviction recorded by the learned Trial Court for offence under Section 308 of IPC, the appellant has preferred the present appeal – primarily on the grounds that the learned Trial Court had failed to consider that the victim and his family members were interested witnesses, whose testimonies could not be wholly relied



upon in the absence of independent eyewitnesses; that the alleged incident had occurred at a public place, yet no independent witness had been examined; that the appellant's plea of *alibi* supported by DW-1 had been disregarded; and that the prosecution had failed to establish the appellant's involvement beyond reasonable doubt, particularly in light of the DNA report which did not support the prosecution's version.

8. This Court has carefully examined the impugned judgment of conviction passed by the learned Trial Court, the trial court record, and the testimonies of the witnesses.

9. The testimony of PW-1, the wife of the victim, reveals that she had specifically deposed that the marriage of their daughter Jyoti was fixed with the appellant, Ram @ Himanshu. However, the appellant had misbehaved and abused them, leading to an altercation between her sister-in-law and the appellant. She further stated that on the following day, when she, her husband, her sister Urmila, and her brother-in-law again visited the appellant's house, he refused to marry their daughter. During this visit, his family members gathered, manhandled them, and stated that the appellant was a criminal with several cases registered against him. Upon conducting a local inquiry, they came to know about the appellant's criminal antecedents, following which they called off the marriage of their daughter with him. She further deposed that thereafter, the appellant and his family members had been threatening and pressuring them to proceed with



the marriage. On 11.07.2021, at about 8:00 PM, she and her daughter were informed that someone had stabbed her husband. She immediately reached the spot along with her children Jyoti, Vishal, and Karan, but by then, her husband had already been taken to the hospital. She noticed a chopper lying at the spot and articles from the victim's rehri were scattered. They informed the police, and the incident was also captured on CCTV. She further stated that once her husband was declared fit to give his statement, he had named the appellant as the assailant.

10. PW-2, son of the victim also deposed on similar lines and corroborated her statement.

11. This Court notes that PW-3, the complainant and victim, had deposed before the learned Trial Court that the marriage of his daughter was initially fixed with the appellant; however, as also deposed by PW-1 and PW-2, the marriage was called off due to the appellant's bad behaviour and his criminal antecedents. He further stated that on 11.07.2021 at around 8:00 PM, while he was present on the street where he sells articles on his rehri, the appellant attacked him with a chopper, i.e., a meat-cutting knife (murga kaatne waala chopper), striking him on his head and face. As a result, he lost consciousness, and once he regained consciousness, the police recorded his statement. During cross-examination, PW-3 stated that the appellant had inflicted repeated blows on his head and face with the chopper. Since the attack was sudden, he could not call the police



himself as he became unconscious immediately thereafter. However, he confirmed that he had seen the appellant approaching him with the chopper in hand while the appellant was still at some distance.

12. This Court notes that PW-4, Jyoti, daughter of the victim, with whom the marriage was initially fixed with the accused, deposed before the learned Trial Court that after the marriage was called off that the accused had started calling her and abusing her. He also used to send obscene photographs on her mobile phone. She further stated that in March 2021, while she was going to the market with her friends, the appellant had blocked her way, apologised by touching her feet, and again asked her to marry him. However, when she had refused, he had physically assaulted her. She had somehow managed to save herself and immediately called her parents, who thereafter had lodged a complaint with the police regarding the incident. Although the accused had promised not to trouble her again, he did not keep his word and continued to harass her.

13. This Court notes that the appellant had examined DW-1 Sachin to set up a plea of *alibi*, claiming that on 11.07.2021, the appellant was present at his residence to attend a family function and had stayed there the entire night, leaving only the next morning. However, as rightly pointed out by the learned APP for the State, the appellant never confronted any of the prosecution witnesses during cross-examination with this defence. In this Court's view, the learned Trial Court has rightly noted that the plea of *alibi* was introduced as



an afterthought during the defence stage of the trial.

14. Further, DW-1 Sachin himself failed to furnish any reliable proof in support of his deposition. He admitted that no photographs of the family function were taken. He also could not recall the mobile number from which he had allegedly contacted the appellant on the date of the incident. He did not produce any document, CCTV footage, or independent witness to substantiate his claim that the appellant was with him at the relevant time. Moreover, he admitted that he had never approached the police to disclose this fact. In these circumstances, this Court finds merit in the argument of the learned Additional Public Prosecutor that the testimony of DW-1 lacks credibility and carries no probative value, and thus deserves to be discarded.

15. As far as the medical evidence is concerned, PW-6 Dr. Sukanya Bhatt from AIIMS Hospital proved the MLC (Ex. PW-6/1) of the victim Dinesh Kumar. The said MLC clearly records that the victim had sustained two lacerated wounds – one over the forehead and the other over the occipital region – exposing the bone calvaria. The MLC also notes that the victim was medically unfit to give a statement on the date of the incident.

16. Though PW-3, the victim, relied on certain colour photographs marked as Mark 'A' (Colly.), depicting his head and facial injuries, it is admitted that he neither knew who clicked the photographs nor were they accompanied by negatives (if taken from a film camera) or



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the mandatory certificate under Section 65-B of the Indian Evidence Act (if taken by a digital camera). Further, these photographs were never handed over to the police during investigation. Consequently, these photographs do not carry any evidentiary value to establish the factum or extent of injuries.

17. The victim also deposed that due to the assault by the appellant, his left eye had suffered permanent damage. However, PW-6, Dr. Sukanya Bhatt, had confirmed in her testimony that no injury to the eye is mentioned in the MLC Ex. PW-6/1. In the absence of medical evidence, no conclusion can be drawn regarding damage to the victim's eye. Nevertheless, the lacerated injuries to the victim's forehead and head, exposing the bone calvaria, stand duly proved through medical evidence.

18. On a cumulative appreciation of the evidence, this Court finds that the prosecution has successfully established that on 11.07.2021, at around 8:00–8:30 PM, at Main Market, Gautam Puri, near Valmiki Mandir, the appellant Ram @ Himanshu had intentionally assaulted the victim Dinesh Kumar with a meat-cutting chopper, causing serious injuries the victim, as discussed above. Further, the nature of injuries caused were such that they were likely to result in death, thereby attracting the ingredients of the offence under Section 308 of IPC.

19. Thus, in view of the foregoing discussion, this Court is of the opinion that the learned Trial Court has committed no error while



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convicting the appellant for offence punishable under Section 308 of IPC.

20. Accordingly, the present appeal is dismissed alongwith pending applications.

21. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 01, 2025/ns