

**In the Court of Sh. Ashwani Kumar Sarpal, Principal District &
Sessions Judge, East District, Karkardooma Courts, Delhi.**

(SC no. 720/2022)

State

vs.

Pawan Gupta & Others

FIR no. 284/2020

Under Section 308/34 IPC

Police Station Mandawali

Date of institution---1-10-2020

Date of decision-----9-3-2026

JUDGMENT:-

- 1) In this case under Section 308/34 IPC, accused no. 1 Pawan Gupta @ Kallu and accused no. 2 Gagan Gupta @ Bhola were arrested on 9-7-2020 and were released on bail on 29-7-2020 and 31-7-2020 respectively. Accused no. 3 Usha (being on anticipatory bail) was formally arrested on 1-8-2020 and released. The chargesheet in this case was filed on 1-10-2020 and

committed to Sessions Court for 7-7-2022. Charge under Section 308/34 IPC was framed against the accused persons on the basis of prosecution allegations to which they pleaded not guilty. A-1 and A-2 are real brothers, whereas A-3 is their sister. Injured Vicky is brother in law (Devar) of A-3.

- 2) It is alleged by the prosecution in the chargesheet that on 8-7-2020, on receipt of DD no. 67A, IO ASI Umesh Kumar alongwith Ct. Bansi Lal reached at the spot of incident i.e. house no. D-31, Ganesh Nagar, Pandav Nagar Complex, where they came to know that injured Vicky was already taken to LBS hospital by PCR. IO searched for eye witnesses at the spot but no witness was found. Thereafter, they reached LBS hospital and collected MLC of injured Vicky who was under treatment. IO asked him to give statement but he refused to give it being not well. IO alongwith Ct. Bansi Lal returned to the PS and after a few hours, they again reached LBS hospital and recorded statement of injured Vicky, wherein he stated that on 8-7-2020, his elder brother Raju came to him at the shop and asked him to take back his Rs. 60,000/- and sign the papers because they are three brothers and about 15 years ago, all three of them together had purchased a 50 yards plot in

Elaichipur, Loni. While buying the plot, injured Vicky also gave Rs. 60,000/- to his brother Raju but he cleverly got registered this plot in his own name and now he was asking Vicky to take back his Rs. 60,000/-. Raju also said that his brothers in law A-1 and A-2 were abusing injured Vicky and were saying that he should tell Vicky not to go at the plot. At that moment, Vicky called A-2 from his phone and asked him why he was abusing him. In reply, A-2 told Vicky that he should first come home, then he will tell the reason for abusing him. It was around 6 p.m. in the evening, when injured Vicky came to his aunt's house and was standing outside the house of accused persons, then A-2 came out with a stick and started beating him. At the same time, A-1 and A-3 also came out from inside of their house. A-3 caught Vicky from behind and A-1 hit on his head from behind with a sharp object. A-2 also hit Vicky with the stick on his head several times which he tried to stop with his hands. On the basis of this statement, IO prepared Rukka, got the case registered under Section 308/34 IPC and prepared site plan. A-1 and A-2 came in police station and injured Vicky identified them being the culprits, so they were arrested. IO also recorded disclosure statements of accused and

recovered stick used during commission of offence at the instance of A-2. However, blade used by A-1 for causing injuries to the Vicky could not be recovered as it was thrown in a drain by him. Lateron, A-3 was also formally arrested and released as she was granted anticipatory bail by the court. After completion of investigation, ultimately the chargesheet was filed.

- 3) In order to prove its case, prosecution examined total 9 witnesses including complainant/injured Vicky as PW-2, whereas accused persons also examined DW-1 Raju Mathur in their defence. In their respective statements u/s 313 Cr.P.C., accused persons alleged their false implication in this case due to property dispute between Vicky and his brother who is husband of A-3. I have heard Addl. PP for State and counsel for the accused persons and gone through the record. Following points were raised by both the parties during arguments;
- 4) **Identity of accused persons is undisputed:-** Injured Vicky knew the accused persons very well as they were relatives. According to complainant PW-2 Vicky, on the next day of incident both accused A-1 and A-2 were brought to PS and he identified both of them. IO prepared arrest memos of both A-1

and A-2 which are Ex. PW2/B and Ex. PW2/C and signed by injured Vicky. When the injured PW-2 knew very well accused persons, then there was no necessity to get them identified in TIP proceedings.

- 5) **Complainant/injured proved assault upon him:-** PW-2 Vicky is the complainant and the injured. He stated in his statement that there was a dispute between him and his brother Raju Mathur (DW-1) over a house. He stated that on 8-6-2020 at 4 p.m., his brother Raju met him at his roadside shop and disclosed that his both brothers in laws A-1 and A-2 were abusing him and his brother Raju suggested that Vicky should meet them. PW-2 Vicky further stated that at about 6 p.m., he was standing outside of house of accused, then A-2 came out from house with a wooden stick (Danda) and started beating him. Meanwhile A-1 also came out and attacked him. A-3, who is sister of both A-1 and A-2 also came out of house and attacked on him. He further deposed that A-3 caught hold of him, whereas A-1 attacked him with a wooden stick and A-2 attacked him with a pointed object. They gave blows on his head and he protected his head with his hands. However, he sustained head injury despite putting his hands on

the head. Thereafter he fell down but accused persons continued beating him and he became unconscious. Someone informed police at number 100 and police officials took him to LBS Hospital where he got treatment. In later part of his statement, this witness clarified that actually A-1 attacked on his head with sharp edged weapon and A-2 gave several blows on his head with wooden stick and due to some confusion, he spoke differently in initial part of his statement. Even in his cross examination, PW-2 stated that firstly A-3 came out of house and caught hold him from back and there after A-1 and A-2 also came from back side and they gave beating to him on his legs and he fell down, then only A-3 released him. Accused A-2 gave beating on his legs with wooden stick by giving 5-7 blows. When he got up again, then A-1 hit him on his head with some sharp weapon. PW-2 Vicky specifically denied suggestion given on behalf of accused persons in his cross examination that he had falsely implicated them in order to get share in the property belonging to his brother DW-1. Thus, from the testimony of injured PW-2, the commission of offence by all the three accused persons is clearly established.

6) PW-6 though technically is not an eye witness but still

proved some part of incident:- Prosecution cited PW-6 Rahul Saxena as an eye witness of the incident but he deposed that he was present in his house and came out after hearing hue and cry. He found that A-1 and A-2 were moving away from the spot and PW-2 Vicky was lying on the road in injured condition. This witness further deposed that he took Vicky inside his house and one of his neighbour namely Kajal informed the police on 100 number at about 7 p.m. In his cross examination, this witness stated that he was inquired by the police officials about this case but denied that his statement was recorded. However, he also stated that he had also seen A-3 along with A-1 and A-2 at the spot whose name he could not mention in earlier part of his statement. Police officials reached after 15-20 minutes of that call and injured Vicky remained inside his house in between. Thus, even if this witness PW-6 cannot be treated as an eye witness of the whole incident but he had seen last part when accused persons were leaving the spot and Vicky was lying in injured condition. Otherwise also, testimony of the injured PW-2 Vicky is reliable and is sufficient to prove the case against the accused persons.

7) **Injuries are proved by doctors:-** PW-1 Dr. Mala, Sr. Medical

Officer from LBS Hospital proved the MLC of injured Vicky who was medically examined under her supervision and in her presence on 8-7-2020 at 7.25 p.m. with alleged history of assault. She specifically denied the fact of preparation of false MLC. Mere fact that she had not taken alleged history from the injured is not a ground to doubt her statement. Upon examination of injured Vicky, following injuries were found:

1. Incised wound over vertex area of skull measuring 15 x .5 cm with active bleeding, longitudinally placed.
2. Incised wound present over vertex area of skull measuring 8 x .5 cm with active bleeding, longitudinally placed.
3. Tenderness over left thigh with swelling.
4. Tenderness at left side of anterior chest.

Complainant PW-2 was sent to Ortho and Surgery department for further management as per MLC Ex. PW1/A and ultimately his injuries were found simple in nature. This fact is proved not only by PW-1 Dr. Mala but also by PW-7 Dr. Pulkit Gupta. However, it is a fact that complainant/injured PW-2 had suffered incised wounds on his head which could generally occur with some sharp object. Counsel for accused during arguments stated that injuries suffered were self inflicted in nature but in this regard, nothing

was put to injured PW-2 in his cross examination nor any question was asked to doctors that those injuries could be self inflicted.

- 8) **Identification of weapon of offence i.e. wooden stick (Danda) and non recovery of blade:-** Injured PW-2 Vicky correctly identified one wooden stick Ex. P-1 being the same which was used by A-2 in inflicting injuries upon him. This stick was got recovered by A-2 in pursuance of his disclosure statement and thus that portion of statement is admissible in evidence. Mere fact that blade which was used by A-1 to cause injuries upon Vicky was not recovered itself is not a ground to doubt the prosecution story, when he specifically stated that some sharp object was used by A-1 in order to cause him injuries and MLC Ex. PW1/A also establishes that two incised wounds were found on the head of the complainant/injured PW-2. Thus, atleast one weapon of offence used in commission of offence by A-2 was recovered and correctly identified. In such situation non recovery of blade becomes unimportant fact.
- 9) **There is no dispute of spot of incident:-** PW-2 injured Vicky could not tell the house number of accused persons in his cross

examination but stated that their house is situated two houses away from the house of his bua, where he was residing at the relevant time. IO has prepared the site plan of the spot of incident and the location shown in the same is not disputed at all by accused persons in his cross examination. The incident had taken place in front of house of accused persons.

- 10) **Motive of assault is proved by prosecution:-** PW-2 complainant Vicky in his statement alleged that there was a dispute between him and his brother Raju Mathur (DW-1) i.e. husband of A-3 and brother in law of A-1 and A-2, over a house situated in Loni, Ghaziabad. Title documents of said property are in the name of his brother Raju. PW-2 also stated that he had given Rs. 60,000/- for purchase of said property to his brother Raju. Absence of existence of any documentary proof of giving amount of Rs. 60,000/- to his brother is of no consequences, when his brother DW-1 Raju in his statement admitted that he had borrowed Rs. 40-50 thousand from Vicky for purpose of house. Even if, it is presumed for sake of arguments that complainant PW-2 Vicky had wrongfully started demanding share in the said house as well as return of his money due to which there arose a

dispute between them and their relations became strained but still it was not justified act on the part of the accused persons supporting DW-1 to cause injuries to the complainant Vicky. Thus, existence of motive on the part of the accused persons who were favouring DW-1 in committing the offence is proved by prosecution.

- 11) **Defence witness is unreliable and untrustworthy:-** DW-1 Raju Mathur is the real brother of PW-2 Vicky. In his examination in chief, this witness attempted to show that complainant Vicky had come at the spot after fighting with someone and started demanding share in his property and also threatened to implicate accused persons by uttering words “*Mujhey Hissa Do Varna Main Tumhe Fasa Dunga*”. However, in his cross examination, DW-1 admitted that he had not seen the incident as Vicky was already in injured condition when he saw him. DW-1 did not know how Vicky had suffered injuries. Thus, it is not possible to accept the testimony of DW-1 that PW-2 Vicky had fight with someone else and he threatened his brother in laws to falsely implicate them in a case especially when DW-1 was not present at the spot. He also stated that PW-2 Vicky had lodged false

complaint against his wife and brother in laws but he had not given any written complaint with the police in this regard. His version that he prepared one complaint with signatures of 4-5 persons of locality but it was not accepted by police so he threw away that complaint is difficult to be believed. He did not approach senior officers of police complaining about the alleged false involvement of accused persons. The defence story as projected by this witness DW-1 that PW-2 Vicky had fight with someone else and he threatened accused persons was never put in the cross examination of the PW-2 at all which leads to the inference that DW-1 who actually was not present at the spot has cooked up a false story in order to save the accused persons. Thus, DW-1 is unreliable witness and his testimony regarding incident cannot be believed. On the other hand, in the cross examination of complainant PW-2, a different and contradictory suggestions was given to him by accused persons that actually he had quarreled with his brother Raju (DW-1) who had grappled with him and in order to grab his property, accused persons are falsely implicated.

12) Contradictions are very minor and immaterial:- According to

PW-2, his statement Ex. PW-2/A was recorded in police station whereas it is the case of prosecution that his statement was recorded in LBS hospital, upon which rukka was prepared and sent to police station for registration of FIR. No suggestion was given to IO in his cross examination to dispute the recording of statement of injured in police station. The contradiction in the statement of complainant PW-2 Vicky who came firstly from inside of house and who came subsequently is not so serious fact to disbelieve his testimony as it is fully proved that all the accused persons in furtherance of their common intention had caused injuries to PW-2. In DD no. 67A Ex. PW5/A it is mentioned that '*caller ko jhgre me ek ladke ne sir me blade mar diya h.*' Counsel for accused persons stated that from the words used in this DD, it appears that injured Vicky had made a call to the PCR himself but this is not a correct fact as call was made by Kajal as per statement of PW-6. No suggestion was given to PW-6 or injured Vicky PW-2 that call was made to police not by Kajal but by PW-2 himself. Non examination of Kajal as prosecution witness is not fatal to the case. Similarly, no benefit can be given to the accused persons, even if PW-2 at first instance gave wrong

date of incident as 8-6-2020 (instead of 8-7-2020) which he corrected in later part of his statement. These minor contradictions or discrepancies are not sufficient to throw away the case of prosecution which is genuine and correct.

- 13) Evidence of formal witnesses completed links in prosecution story:-** PW-5 SI Yad Ram posted as duty officer in police station proved DD entry no. 67A Ex. PW5/A, computerized copy of FIR Ex. PW5/B, endorsement made by him on rukka as Ex. PW5/C as well as certificate u/s 65-B of Evidence Act. No question was put to him in his cross examination to dispute any such document or its contents or manner of recording etc. PW-8 HC Narender from Malkhana of police station proved that case property i.e. wooden stick was deposited in Malkhana in sealed condition by the IO as per entry in register no. 19 Ex. PW8/A. No suggestion was given to him that case property was tampered during the period it remained in Malkhana. PW-4 WHC Suman was present when A-3 was formally arrested vide memo Ex. PW4/A and immediately released being already granted anticipatory bail.

- 14) Investigation aspects are proved by PW-3 Ct. Bansi Lal and**

IO PW-9 ASI Umesh Kumar:- Both these witnesses deposed that on 8-7-2020 at about 6.30 p.m., on receipt of DD no. 67A Ex. PW5/A, they reached firstly at the spot but found that injured was already taken to LBS hospital by PCR. They reached at the LBS hospital where they met injured Vicky who was under treatment in emergency. However, he did not give any statement on the pretext of being not well. Thereafter, they returned to the police station. These two witnesses further deposed that at about 10.30 p.m., they again reached at LBS hospital, where PW-9 recorded statement of injured Vicky as Ex. PW2/A, prepared rukka upon it Ex. PW9/A and handed over to PW-3 who took the same to PS Mandawali and got the FIR Ex. PW5/B registered through duty officer PW-5. After registration of the FIR, PW-3 reached at the spot and handed over copy of FIR alongwith rukka to the IO. These two witnesses also stated that both accused A-1 and A-2 had come in police station and injured PW-2 also reached there and identified both the accused persons as assailants. Thereafter, both A-1 and A-2 were arrested vide arrest memos Ex. PW2/B and Ex. PW2/C respectively. Their disclosure statements were also recorded vide Ex. PW9/D and Ex. PW9/E and A-2 got

recovered wooden stick Ex. P-1 from his house which was seized vide seizure memo Ex. PW3/A but blade used could not be found. They also proved that site plan was prepared by IO PW-9 at the instance of the injured PW-2 which is Ex. PW3/B. Both these police officials also proved formal arrest of A-3 vide Ex. PW4/A and some other aspects of completion of investigation. Some suggestions put to these two witnesses regarding false implication of accused persons, conducting proceedings in police station, non recovery of any danda, non giving of any disclosure statements by accused etc. were specifically denied by them. IO PW-9 admitted in his cross examination that wife of Rahul Saxena (PW-6) met him when he reached at the spot first time who told that injured had been taken to hospital. Non recording of statement of that lady is not sufficient to create doubt about the prosecution case when it is not the case of the accused persons that she was present at the spot and had seen the incident. Nothing substantial in the cross examination of these witnesses has come on record to doubt their credibility.

15) **Offence u/s 308 IPC is made out:-** At last counsel for accused persons argued that Danda Ex. P-1 which was recovered at the instance of A-2 was used to give blows on the thighs of the injured PW-2 Vicky and simple injury no. 3 being tenderness as mentioned in MLC maximum to maximum can be taken into consideration to convict A-2 under Section 323 IPC but not under Section 308 IPC. However, this argument cannot be accepted because all the three accused persons with their common intention caused injuries to PW-2 Vicky who had suffered two incised injuries on his head and even one tenderness injury on chest and both these organs are treated as vital part of body. Offence u/s 308 IPC postulates doing of an act with such intention and knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is an attempt to commit culpable homicide which is punishable under Section 308 IPC. Thus, while relying upon decision of Hon'ble Supreme Court in **Sunil Kumar vs. NCT of Delhi (1998) 8 SCC 557**, all the accused persons are liable to be convicted under Section 308 read with Section 34

IPC. Let they be heard on point of sentence.

Dt- 9-3-2026.

(Ashwani Kumar Sarpal)
Principal District & Sessions Judge
East District, Karkardooma Courts, Delhi.