

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

(SC no. 904/2022)

State vs. Sameer @ Tillu & Another

FIR no. 436/2022

Under Section 308/34 IPC

Police Station: Kalyanpuri

Date of institution---22.07.2022

Date of decision-----15.04.2026

JUDGMENT:-

- 1) In this case under Section 308/34 IPC, two accused persons namely Sameer @ Tillu (A-1) and Pawan Kumar (A-2) were chargesheeted. There was one another associate of the accused persons namely Honey @ Deep Singh, but he expired prior to the date of filing of the chargesheet in the court.
- 2) Record shows that A-1 was arrested on 29.05.2022 and released on bail on 17.10.2023. Due to remaining absent from court, he

was again taken in custody on 17.12.2025 and since then he is in custody as on date. As per record, A-2 was arrested on 12.07.2022 and released on bail on 16.01.2023. However, he jumped bail again and again and remained in custody from 22.05.2024 till 12.07.2024 and from 20.07.2024 till 21.10.2024. He was again taken in custody on 17.12.2025 and since then still is in custody.

- 3) The chargesheet in this case was filed on 22.07.2022 before the Magistrate Court and committed to Sessions Court on 18.08.2022. Charge under Section 308/34 IPC was framed against both the accused on the basis of prosecution allegation to which they pleaded not guilty.
- 4) It is alleged by the prosecution that on 09.05.2022 on receipt of DD no. 6A dated 09.05.2022, HC Mohit Kumar reached at address bearing no. 10/135, Khichripur, where he came to know that injured Aman had already been taken to LBS hospital. Thereafter, IO HC Mohit proceeded to LBS hospital and collected MLC of injured Aman who was declared unfit for statement as per MLC and was referred to higher centre, so the DD no. 6A was kept pending. On 10.05.2022, complainant/injured Aman reached

at the police station and gave statement in which he mentioned that on 09.05.2022 at about 12.05 AM, he was proceeding towards his house after putting his e-rickshaw on charging and in the way at T-camp, near T-camp park, Khichri Pur, both the accused A-1 and A-2 alongwith another associate Honey (since deceased) met him. Complainant Aman was already knowing them. A-2 asked the complainant to lend him Rs. 300/- by stating that he was in the mood to drink alcohol that night. Complainant refused to give any money by explaining that he did not have such amount with him. At this, the other two accused persons laughed and taunted A-2 by saying that '*ki teri itni bhi aukaat nahi hai ki tujhe koi Rs. 300/- udhaar de sake*'. Thereafter, A-2 demanded money from complainant again, who again refused to give it. On this, verbal altercation took place between the complainant and accused persons. Thereafter, A-1 and his associate Honey (since deceased) caught hold the complainant Aman, while A-2 gave danda blow on his head. Thereafter, all the three accused persons jointly assaulted the complainant but he somehow managed to escape from their grip. However, all the three accused persons chased him and caught him near the Rama

Krishna School, Khichripur, 10 Block and beat him again and then left him in an injured condition. Somehow, the complainant Aman reached his house and his family members made a call to PCR at 112 number. An ambulance arrived and transported the injured Aman to LBS hospital, from where, he was referred to Safdarjung hospital. On the basis of this statement of the injured complainant Aman, the IO HC Mohit Kumar got the case registered on 10.05.2022 at 7.23 PM. Thereafter, the investigation of the case was marked to SI Ajay Sharma. Accused A-1 was arrested on 29.05.2022 on the basis of the secret information in the presence of the complainant Aman. The accused Honey was found dead, whereas the A-2 came in the police station on 12.07.2022, where the complainant Aman appeared suddenly and identified him, who had given danda blow on his head. Thereafter, A-2 was also formally arrested. The injuries of the complainant were ultimately found simple in nature and after completion of investigation, the chargesheet was filed in the court.

- 5) In order to prove its case, prosecution examined total 12 witnesses, whereas accused persons did not choose to lead any evidence in defence. I have heard Id. Addl. PP for State and counsels for both the accused persons and gone through the record.
- 6) The statement of PW-2 Smt. Preet Kaur sister of the deceased accused Honey is of no use to the prosecution as she simply proved that her brother Honey @ Deep Singh had expired due to suicide on 17.06.2022 much prior to the date of filing of the chargesheet.
- 7) PW-3 Dr. Gunjan deposed that on 09.05.2022, she was working as CMO at LBS Hospital. On that day, one injured Aman Kumar was brought by ambulance with alleged history of assault who was examined by Dr. Rohit Junior Resident, under her supervision vide MLC Ex. PW-3/A and following six injuries were found on his person:
1. Lacerated wound over left side of occipital region size 2x.2 cm approx.
 2. Abrasion and swelling on the occipital region.

3. Pain and swelling over left side of face.
4. Abrasion over bilateral shoulder.
5. Bruise over back.
6. Abrasion over both knee without restriction of movement.

From LBS hospital, injured Aman was referred to Surgery Department for further management in Safdarjung Hospital where PW-10 Dr. Shivendu examined him at about 3.32 a.m. on same night, and found ENT and mouth bleeding positive as per emergency card Mark X. PW-11 Dr. Shubham proved NCCT Head of the injured Ex. PW-11/A and found no evidence of intracranial bleed or calvarial fracture. As per PW-3, injuries suffered by Aman were ultimately found simple in nature. She in her cross examination deposed that such kind of injuries can be sustained, if a person falls on the hard surface several times and from different directions.

- 8) PW-4 ASI Abdul Karim simply recorded DD no. 6A Ex. PW4/A at 12.47 AM on 09.05.2022 regarding receipt of information from PCR about the incident of beating taken place with injured Aman

whereas PW-5 SI Sher Ali duty officer recorded formal FIR Ex. PW5/A on receipt of the rukka directly from HC Mohit Kumar in police station and made endorsement on it as Ex. PW5/B.

- 9) According to PW-6 Ct. Ravi Kumar, on 29.05.2022 he got a secret information regarding presence of accused A-1 in the park of Indira Camp, Khichri Pur and passed on this information to IO PW-12 SI Ajay Sharma. Thereafter, they reached at the park and arrested A-1 at about 11.30 AM vide arrest memo Ex. PW6/A and conducted his personal search vide memo Ex. PW6/B. PW-9 HC Kanhaiya on 29.05.2022 reached Karkardooma Court alongwith the IO PW-12 SI Ajay Sharma where the accused A-1 was produced before court and was remanded to JC by the court. On the other hand, PW-7 HC Nitin deposed that on 12.07.2022, at about 1.30 PM, accused A-2 came in the police station and was interrogated by the IO PW-12 SI Ajay Sharma. Meanwhile, complainant Aman also reached there and immediately identified A-2 being the same person who had hit him on his head with the danda. Thereafter, A-2 was arrested vide arrest memo Ex. PW7/A and his personal search was conducted vide memo Ex. PW7/B.

PW-7 also stated that IO made efforts for search of weapon of offence i.e. danda but it could not be recovered. IO PW-12 in his testimony corroborated PW-6 and PW-7 in this regard. Nothing substantial has come in the cross examination of PW-6, PW-7 and PW-12 regarding manner of arrest of both the accused persons. However, disclosure statement of both these accused persons recorded by IO cannot be read in evidence being inadmissible evidence as no recovery of any weapon has taken place in pursuance of the same. Mere fact that PW-7 could not tell how complainant reached in police station on 12.07.2022 is not a material fact to doubt the arrest of A-2 when he specifically confirmed that complainant had identified this accused in his presence.

- 10) PW-8 HC Mohit being first IO, on 09.05.2022, at about 12.45 AM, after receipt of call vide DD no. 6A Ex. PW4/A reached at residential address of the injured and then reached hospital. Since the injured was found unfit for statement so he kept the DD pending. On 10.05.2022, complainant Aman came at the police station at about 3.00 PM and gave statement Ex. PW1/A upon

which this witness PW-8 prepared rukka and got the case registered and handed over further investigation to PW-10 SI Ajay Sharma. Nothing material in favour of the accused persons came in cross examination of this witness PW-8 as non remembering of exact timings such as when he reached at the address of complainant or at LBS hospital or when he came back to police station or at what exact time, complainant came in police station etc. are not sufficient to disbelieve his testimony as he has specifically denied false implication of the accused persons in this case. Second IO PW-12 SI Ajay Sharma proved certain facts relating to his investigation done by him such as preparation of site plan Ex. PW12/A at instance of complainant, arrest of A-1 and A-2 on 29.05.2022 and 12.07.2022 respectively at the identification of complainant, preparation of different memos, attempt made for recovery of weapon of offence i.e. danda but could not succeed etc. However, he correctly identified both the accused persons before the court. He denied that he did not conduct free and fair investigation or falsely implicated the accused persons.

- 11) PW-1 complainant/injured Aman is the victim and the main prosecution witness. In his statement, he deposed that on 09.05.2022, he had parked his E-rickshaw at T-Camp Park and was returning home. Just after 12.00 am (mid night), accused persons A-1 and A-2 alongwith their associate Honey (since deceased) met him at T-Camp park and demanded money. All of them were under some kind of intoxicant. PW-1 further deposed that he refused them to give money and after hearing it, they became angry and started manhandling him and gave beatings. PW-1 further stated that he tried to flee away from there and hardly run for 500 paces but the accused persons again apprehended him. Accused Honey (since deceased) caught hold of him from behind and accused A-1 and A-2 gave him wooden stick blows which hit on his head, face, shoulders and back. Some public persons tried to save him but all the accused fled away from the spot. PW-1 somehow managed to reach his house and his family members called police at no. 112. Ambulance reached there and took PW-1 to LBS Hospital. After the initial treatment, he was taken to another hospital. He visited the PS Kalyan Puri but no case was registered, so he went to DCP office. Thereafter,

FIR was registered on his statement Ex. PW-1/A. He further deposed that all the accused persons were arrested in this case after few days of incident and he correctly identified both accused A-1 and A-2 in the court.

- 12) No doubt, PW-1 in his cross examination stated that he told the nick name of the accused A-1 as "Tillu" to the police officials and did not specify his parentage, address and his complete name to the police but that is immaterial fact as he also stated that he came to know his official name as 'Sameer' only after his arrest and prior to that he was only aware with his nick name. He though did not know the date, when the accused A-1 was arrested but confirmed that he was arrested on his pointing out after 10-15 days of the incident. The incident took place on 09.05.2022 and A-1 was arrested on 29.05.2022 after 20 days. This very small contradiction whether the accused was arrested after 10-15 days or 20 days is highly immaterial and ignorable fact.
- 13) As per the police story, accused A-1 was arrested on the basis of secret information and the complainant was called at the time of his apprehension to identify him. The accused A-1 was arrested at

T-Camp Park as per arrest memo Ex. PW6/A. PW-1 had stated in his cross-examination that actually, police officials apprehended A-1 and took him to the police station, where he was called and he identified this accused in police station at the noon time. He did not sign anywhere and even the arrest memo is not bearing the signatures of the complainant. This ground whether the complainant identified the accused A-1 at the place of his arrest or in the police station is not so serious fact to disbelieve the convincing testimony of the complainant PW-1 that he was caused injuries by accused persons including A-1.

- 14) PW-1 further in his cross-examination stated that at least, 10-15 public persons were present at the time of incident. One of them namely Anil intervened in order to pacify the accused persons but complainant had not disclosed the name of Anil to the police officials. Non joining of said Anil as a witness by the prosecution is not fatal because the court has to see whether the statement of the complainant who was injured is reliable or not. PW-1 in his cross-examination stated that he had disclosed the name of A-1 to his family members, when he reached to his house after the

incident. If the family member who had made a call to the police at 112 number did not mention the name of A-1 to the police, then for that the prosecution case cannot be discarded.

- 15) PW-1 also in his cross-examination stated that he did not visit the spot with the police officials which means the version of the IO that he had prepared the site plan at the instance of complainant PW-1 is not correct. Site plan does not bear the signature of the complainant also. No question was asked from the IO PW-12 that site plan prepared by him is wrong and not as per actual site. The incident had happened in the midnight and the site plan shows street light poles nearby the spot of incident and thus there exist no chance of any doubtful recognition of the accused persons.
- 16) PW-1 further stated in his cross examination that he had not given the age and the details of this accused A-1 as well as details of his wearing clothes in his complaint Ex. PW1/A. He also admitted that he was not having any relations or talking terms with A-1, prior to this incident nor he was having any quarrel with him earlier or did not tell the name of A-1 to the doctor, who had examined him but he specifically stated that A-1 was wearing

round neck T-shirt and jeans, on the day of incident, though he did not remember the colour of T-shirt but the colour of his jeans was light blue and white. He did not remember whether A-1 was wearing sleepers or shoes on the day of incident. These facts are not so serious to discard the testimony of the injured complainant who appears to be reliable witness specially when he denied the suggestion that he has falsely implicated the accused persons in this case. PW-1 had suffered injuries as per medical record and when testimony of such injured inspires confidence, then some minor contradictions or improbabilities which are not so serious can be ignored specially in the circumstances when the accused persons are giving different contradictory suggestions to the prosecution witnesses regarding the manner of suffering of injuries by the complainant.

- 17) PW-1 denied the suggestion that he alongwith his friends used to take liquor at T-Camp, Khichripur and after consuming the liquor a quarrel had taken place in between him and his friends and thereafter, one of his friends namely Anil gave a brick blow on his head and due to which, he sustained injury and later on falsely

implicated A-2 in this case. However, the prosecution examined three doctors to prove the medical record of the complainant/injured and from none of them, any question was put that the injuries suffered on the head could be caused by the brick blow. Hence, the defence story that injured PW-1 suffered injuries in a quarrel taken place with Anil while consuming liquor is not reliable or acceptable.

- 18) In the cross examination, PW-1 also deposed that he was not acquainted with the accused A-2 prior to the incident nor told this fact to the police official in his complaint Ex. PW1/A for which he was confronted. However, he admitted that he had told the names of the accused persons at his own and even denied the suggestion that A-2 was falsely implicated in this case. Hence, on this ground alone, no case is made out for acquittal of A-2 because casually knowing any particular accused by his nick name or having any earlier acquaintance or close friendship or relations with him are two different things.
- 19) The incident had happened at about 12.05 AM (mid night). Injured/complainant Aman after the incident reached his house

somehow from where the call was made to the police at 12.47 AM vide DD Ex. PW4/A to PCR by family member. The injured was taken by the ambulance to the hospital immediately from his residence and he was examined by the doctor at 1.18 AM. The above sequence of the timings and short durations rule out any chance of manipulations. Mere fact that injured himself had informed to the doctor regarding taking of alcohol itself is not sufficient to presume that he had suffered injuries due to fall especially when PW-3 doctor specifically said that injuries on the person of Aman could be caused only after multiple falls and in different directions which is not the case of the accused persons as they are saying that he suffered injuries in the hands of his own friend Anil over dispute while taking liquor.

- 20) PW-1 in his cross-examination stated that accused A-2 was arrested at least after 10-15 days of the incident and he had found him in the police station whereas it is a fact as per prosecution allegation that this accused was arrested on 12.07.2022 after about two months of the incident. The complainant might have forgotten the exact date of arrest of this A-2 and it is not sufficient

to disbelieve him.

- 21) PW-12 SI Ajay Sharma deposed that after investigation was marked to him, he went to house no. 10/135, Khichripur where complainant met him and site plan Ex. PW-12/A was prepared at his instance. He further deposed that on 29.05.2022, Ct. Ravi informed him at police station that A-1 who is wanted in the present case, can be arrested from T-Camp (Indira Camp) Park, Khichripur. Thereafter, he called complainant Aman and reached T-Camp Park at about 11.00 a.m. where inside of the park complainant Aman identified the accused A-1 who was arrested vide arrest memo Ex. PW6/A, his personal search was conducted vide memo Ex. PW6/B. He further stated that on 12.07.2022, accused A-2 came at the police station to join the investigation, complainant also came there and identified this accused being involved in the incident. Thereafter, he arrested accused A-2 vide arrest memo Ex. PW7/A and conducted his personal search vide memo Ex. PW7/B. Accused A-2 led the IO to the place where he threw the weapon of offence i.e. danda, however, same was not found but he pointed out the spot of incident vide memo Ex.

PW7/D. During investigation, IO collected the documents regarding the death of co-accused Honey @ Deep Singh. He correctly identified both the accused persons before the court. Simple non remembering the exact time, when he reached at the spot alongwith accused A-2, however, it might be 1.00-2.00 PM but did not record any separate DD entry regarding departure for the spot alongwith accused A-2 from police station is of no consequences. Similarly, non joining of any public witness at the time of attempting to recover danda is also an unimportant fact as no such weapon could be recovered at all. As per IO, no CCTV camera was found installed at the spot.

- 22) According to the complainant PW-1 Aman, the accused A-2 had given danda blows on his head whereas the others had given him beatings. He even escaped once from the hands of the accused persons but they followed and again gave him beatings. Nothing substantial has come in the cross-examination of the complainant/injured PW-1 to create a doubt regarding his testimony. Certain contradictions came on record, are not sufficient to doubt the prosecution story. Whether the site plan was prepared at the

instance of the complainant or not by the IO and whether he knew the A-2 earlier to the incident or not are not such material contradictions to doubt the testimony of the injured PW-1 who had suffered injuries as per medical record proved by three different doctors. If the incident as narrated by the PW-1 is taken into consideration, then it shows that the accused persons were having intention to give beatings to injured twice. One injury on the head of the injured by danda also establish that the intention of the accused persons was to commit the offence of culpable homicide. A minor twist in the testimony of PW-1 whether the danda blows were given by accused A-2 or by both the accused is of not much relevance. Non recovery of the danda is unimportant fact because the accused A-2 who had given danda blow was arrested after about two months of the incident and after so much time, the recovery of weapon most of times becomes impossible. Non seizure of the blood stained clothes of the injured is also not so serious fact when the medical reports clearly shows that PW-1 had suffered injuries. Absence of any public witness at the time of incident was highly probable as the incident took place in the midnight and there was no CCTV cameras installed near the spot

at that time, so there remains no option except to rely upon testimony of injured himself. Simple discharge of the complainant Aman from hospital within 6-7 hours of the incident and suffering of simple injuries are not sufficient to hold that the offence under Section 308 IPC is not made out when the manner of the incident is taken into consideration as accused persons firstly gave beatings to complainant including danda blow on his head and when complainant escaped, then accused persons again chased him and caught hold him after about 500 paces and again gave him beatings. After considering the above facts and circumstances, I find no ground to give any benefit of doubt to the accused persons specially when they are taking contradictory stands regarding manner of incident. On one hand, they are suggesting to PW-1 that the injured was given brick blow by his friend Anil when they were consuming liquor and quarreled, whereas on the other hand they are giving suggestions to the doctors that the injuries were suffered by fall on the hard surface. The doctor PW-3 has specifically stated that injuries suffered by injured could also be caused if he falls on hard surface several times and from different directions but it is not the case of the

accused persons in cross examination of any witness. The injured PW-1 had suffered various injuries as proved by PW-3 on his head, face, shoulder, back etc. and ENT and mouth bleeding was there as per PW-10 which must have been caused by repeated assault or beating. The nature of injuries being simple is not the criteria to hold that offence under Section 308 IPC is not made out. In such circumstances, both the accused persons are hereby held guilty for offence under Section 308/34 IPC and accordingly convicted. Let, they be heard on point of sentence on next date of hearing.

Dt- 15.04.2026.

(Ashwani Kumar Sarpal)

**Principal District & Sessions Judge
East District, Karkardooma Courts, Delhi.**