



## ***JUDGMENT:***

The present FIR was registered on the complaint of Geeta Devi W/o Sh. Brijesh, who stated that on 15.01.2015, one carpenter Manoj was making a table for her children at her house. There was a Court case pending between her husband and her brother in law (Devar) Devender in respect of house situated in front of her house. At about 12.30 p.m., her husband returned after attending hearing of his case in Karkardooma Courts. Accused Devender also returned after attending the said Court case and started abusing them while standing in the street. Thereafter, he called his wife Neema and brother Narender. Neema came out with an iron rod. All the accused persons came inside the house of complainant and started abusing and manhandling her husband. She came downstairs from the terrace and saw that Neema had caught hold the hairs of her husband Brijesh, whereas Devender and Narender were manhandling him. She alongwith Manoj tried to save Brijesh on which Neema gave an iron rod blow on her head and blood started oozing out. All the accused persons fled away from the spot while threatening the complainant and her husband

that if the matter was reported to the police, they would kill them. After the incident, Ranpal and his son Lalit also came in the street and threatened them as to why they had filed the case in Court and stated that what had happened with them had well happened. Police was called at number 100. PCR came and shifted complainant and her husband to JPC Hospital from where the complainant was referred to GTB Hospital.

2. Thereafter, present FIR was registered for the offences under Section 308/452/506/34 IPC. Accused Devender and Narender were arrested in the present case. Anticipatory bail was granted to accused Champa Joshi @ Neema, hence, she was formally arrested. Weapon of offence i.e. iron rod (sariya) could not be recovered in the present case. On completion of investigation, charge-sheet was filed against all the accused persons for the offences punishable under Section 308/452/506/34 IPC.

2.1 Copies were supplied to accused Devender and Neema as required under Section 207 Cr.P.C. Accused Narender expired during the enquiry and therefore, vide order dated 11.11.2021, proceedings against him were abated. On 05.03.2022, case was

committed to the Sessions Court as per Section 209 of Cr.P.C. After hearing arguments, charge for the offences punishable under Section 308/452/506/34 IPC, was framed against accused Devender and Neema vide order dated 11.04.2022.

3. At the trial, the prosecution examined 12 witnesses in all.

(i) PW-1 was the complainant and she deposed about the alleged incident. She proved her statement Ex.PW1/A and correctly identified the accused Devender and Neema before the Court.

(ii) PW-2 Dr. Kakkar had done the suturing of laceration on right parietal region of head of patient Geeta vide MLC no. 3321 Ex.PW2/A and referred her to higher center for NCCT head and Neuro Surgery opinion.

(iii) PW-3 ASI Yashvir Singh was the Duty Officer who had proved DD no. 17-A Ex.PW3/A, copy of FIR as Ex.PW3/B, his endorsement on the rukka as Ex.PW3/C and certificate u/s 65-B of Evidence Act as Ex.PW3/D.

(iv) PW-4 Dr. Meghali Kelkar, CMO had examined the patient Geeta and found contused lacerated wound of 5 X 0.2 c.m. on right

parietal region which was muscle deep and proved her MLC as Ex.PW2/A. He had also examined Brijesh but had not found any external injury on his person. He had proved his MLC as Ex.PW4/A.

(v) PW-5 Brijesh Kumar was the husband of complainant, with whom the incident had initially started. He had deposed that accused Neema had caught hold of her hair, whereas Narender and Devender had beaten him. After hearing noise, his wife came down. She alongwith carpenter Manoj tried to save him but accused Neema inflicted injury on her head with an iron rod. He had correctly identified the accused before the Court.

(vi) PW-6 ASI Sunil Kumar has proved the letter dated 06.09.2022 issued by Sh. Satyawan Gautam, DCP (Communication) which was forwarded by ACP Manju as Ex.PW6/A.

(vii) PW-7 ASI Sanjeev had joined the investigation with IO/SI Saheb Singh and proved the arrest memo of accused Narender Ex.PW7/A, his personal search memo Ex.PW7/B, arrest memo of accused Devender as Ex.PW7/C his personal search as Ex.PW7/D

and their disclosure statements as Ex.PW7/E and Ex.PW7/F. He had correctly identified accused Devender in the Court.

(viii) PW-8 SI Kapil Kumar had deposed that on 28.09.2016, further investigation of the present case was marked to him and he made efforts of apprehend accused Champa Joshi @ Neema, Rakesh, Panpal and Lalit but in vain. On 06.01.2018, he was relieved on transfer.

(ix) PW-9 ASI Chander Prakash that on 04.07.2018, investigation of the present case was marked to him and he had formally arrested accused Champa Joshi @ Neema vide memo Ex.PW9/A as she was on anticipatory bail. He prepared the chargesheet and filed it in the Court. She had identified accused Neema in the Court.

(x) PW-10 HC Ritika had joined the investigation with IO/ASI Chander Prakash and proved the arrest memo of accused Champa Joshi @ Neema as Ex.PW9/A and her disclosure statement as Ex.PW10/A. She had identified accused Neema in the Court.

(xi) PW-11 Retired SI Saheb Singh was the 1<sup>st</sup> IO of the present case. He had proved DD no. 17A Ex.PW3/A, statement of Geeta as Ex.PW1/A and rukka Ex.PW11/A. After registration of FIR, further

investigation was marked to SI Shailender Singh and he narrated the entire facts to him.

(xii) PW-12 Inspector Shailender Singh was the 2<sup>nd</sup> IO of the present case. He had proved the site plan Ex.PW12/A, arrest memos of accused Narender and Devender as Ex.PW7/A and Ex.PW7/C, their personal search memos Ex.PW7/B and Ex.PW7/D, their disclosure statements Ex.PW7/E and Ex.PW7/F. He had identified the accused Devender before the Court.

(xiii) Accused Devender and Champa @ Neema had admitted the genuineness of MLC of Geeta bearing no. A-3321 prepared by Dr. Kakkar Ex.PW2/A as well as opinion given by Dr. Kaushlesh Tiwari on the said MLC at point X1, u/s 294 Cr.P.C.

4. Statements of both the accused persons were recorded u/s 313 Cr.P.C. and the entire incriminating evidence was put to them which they denied and pleaded their innocence. They took the defense that Sh. Dhan Pal had partitioned the property and had given share to Brijesh but he was not happy with that partition, so he falsely implicated them in the present case in connivance with Police. On the other hand, Brijesh and Geeta came to their house

and gave beatings to them regarding which they made compliant to police but police did not register their case and later, on direction of the Court, FIR no. 60/2015 PS Khajuri Khas was registered against Brijesh and Geeta. Brijesh had also filed a civil suit for partition of the property but the same was closed, so Brijesh started having enmity with them and had falsely implicated them in this false case. Another civil suit filed by Brijesh against Devender and his another brother Rajesh was pending before the Court. Firstly, accused persons opted to lead Defence Evidence but later, they opted not to lead any DE and vide order dated 12.11.2015, DE was closed.

5. I have heard Mr. Masood Ahmad - Ld. Chief PP for the State, Shri Sandeep Kumar- Ld. Counsel for both the accused persons and have carefully gone through the records of the case.

6. It was submitted by Ld. Chief PP for the State that the case against both the accused persons has been duly proved. The complainant Geeta and her husband Brijesh had identified both the accused persons in the Court as the persons, who had committed the present offence with them. It was further submitted that though the weapon of offence i.e. iron rod (sariya) could not be recovered

in the present case but the MLC of complainant Geeta and Brijesh corroborates with their version, which shows that they had suffered injuries. Thus, it was argued that the charges have been duly proved against both the accused persons.

7. Countering the arguments of the State, Ld. Defence Counsel submitted that the prosecution has miserably failed to prove the charges against both the accused persons as there are major contradictions. It was submitted that no public person was examined though available. No weapon of offence was recovered in the present case. Hence, it was prayed that both the accused persons may be acquitted.

8. I have considered the rival submissions and I have perused the records of the case.

8.1 PW1 Geeta was the complainant who deposed almost similar facts as deposed in her complaint Ex.PW1/A. She stated that on 15.01.15, there was a date of a case at Karkardooma Courts which was also attended by the accused Devender who was residing in front of her house. At about 12 / 12.30 pm, accused Devender and Narender started abusing her and her husband stating that how he

had filed a property case and asked him to come out of the house and that they would give beatings to him. She further deposed that accused Devender, Neema (Champa Joshi) and Narender entered into her house abusing and started beating her husband. Accused Neema was armed with an iron rod. At that time, she was at the roof of her house and on hearing the noise, she came downstairs. She further deposed that accused Neema attacked her and gave a blow with the iron rod on her head, as a result of which, she started bleeding from her head. She deposed that perhaps her husband called the PCR and police arrived at about 01.00/1.30 pm and she and her husband were shifted to JPC hospital in the police van from where she was referred to GTB hospital. Her CT was conducted and thereafter she returned home. She proved her complaint Ex.PW1/A.

8.2 She was cross examined at length by the Ld. Counsel for both the accused wherein she admitted that accused Devender and Narender and one Rajesh are the real brothers of her husband, who all are sons of Sh. Dhanpal and are having separate kitchens. She admitted that there was a dispute amongst the brothers over

partition of the ancestral property. She was further cross examined regarding the said dispute which only goes on to show that even the accused have admitted about the dispute over a property. However, the detail of the said civil dispute is not required to be mentioned but this fact alone, at least gives motive to the accused for initiating the alleged incident.

8.3 It was admitted by PW1 that her husband Brijesh had not sustained any visible injury. She denied that neighbours came to settle the matter and added that they came after the incident had taken place. She further admitted that accused Devender and Neema had also sustained injuries alongwith Narender (since deceased) in the incident. She further deposed that she had plugged her injury with her dupatta and therefore, no blood came on her clothes. The said dupatta was having blood marks but it was thrown away in the dustbin by a nurse treating her injury. She denied the suggestion that the injury was caused to her when she hit her head on the wall during the scuffle.

8.4 This cross examination clearly suggests two things, firstly that the fight had taken place between the complainant side and the

accused and secondly, that PW1 had sustained injury in the incident. It is a matter of record that a cross FIR bearing no. 60/2015 was also registered regarding the same incident on the complaint of the accused of this case against the complainant and her husband under Section 323/341/506/34 IPC.

8.5 PW1 had also explained the reason for delay in lodging of her FIR during her cross examination, deposing that she was not in a fit condition to give her statement on the day of incident and therefore, had given her statement to the IO on 17.01.15 i.e. after two days. This fact was verified by the IO PW11 who also deposed that on 16.01.15 when he went to the house of the injured Geeta, she did not give her statement stating that she was having severe pain in the head and then recorded her statement on 17.01.15. Thus, the delay if any in lodging of the FIR is well explained. Thereafter, PW1 denied all the suggestions contrary to her case and in line with the cross case.

9. PW5 Brijesh Kumar was the husband of the complainant and he deposed similar facts as deposed by PW1 stating that on 15.01.15, he returned after attending a court case to

his house at about 12.30 pm. Accused Devender also returned from the court and was standing in the gali and started abusing him. He called his wife Neema and brother Narender. Neema was armed with an iron rod and they all entered his house and started scuffling with him. On hearing the noise, his wife came down. One carpenter Manoj who was working in the house also tried to save them, but accused Neema after leaving him, gave an iron rod blow on the head of his wife Geeta as a result of which she started bleeding and the accused fled away threatening them. He also deposed that thereafter, Rajpal, his son Lalit and Rakesh came in the gali and started threatening him as to why he has filed a court case and justified the act of the accused.

9.1 He was also cross examined at length and similar questions regarding dispute over ancestral property were put to him which he admitted, but the same are not required to be repeated here. It is reiterated that there was motive for the said incident which is culled out from the said examination as the accused were not happy with the filing of the civil suit by PW5 regarding the ancestral property.

9.2 In the further cross examination, PW5 was unable to

recollect as to who called the PCR nor the exact time of incident. He deposed that the clothes of his wife got stained with blood but could not remember if they were seized by the doctor or the IO. He denied the suggestion that the incident took place in the portion of the ancestral property where the accused were residing and reaffirmed that it took place in the portion where he and his brother Rajesh were residing. He also denied the suggestions contrary to the prosecution case and in consonance with the cross case. He admitted that Ran Pal, his son Lalit and Rakesh who are his relatives had come to the spot at the time of incident but explained that they remained at the road dividing his house and of the accused. He denied that they tried to intervene and pacify the matter and explained that they had instead threatened him not to lodge any case against the accused.

9.3 This witness was further cross examined regarding the relations between him and his wife but that is not relevant. He also denied that his wife sustained injury as her head struck the wall during the scuffle.

10. PW2 Dr. Kakkar had proved the MLC of injured Geeta

Ex.PW2/A. He did the suturing of her injury on the right parietal region of the head and had referred her to higher center for NCCT Head and Neuro Surgery Opinion. In the cross examination, he deposed that it was possible that injury sustained by Geeta could be due to her head hitting any hard surface. PW4 Dr. Meghali Kelkar had prepared the MLC of the injured Geeta and also of her husband Brijesh Ex.PW4/A.

11. PW6 to 10 were formal police witnesses who remained associated with the investigation at different stages. PW11 was the first IO who had recorded the statement of the complainant and got the FIR registered. PW12 was the second IO who conducted the entire investigation and PW9 had filed the chargesheet.

12. It is clear from the discussion and the testimony of PW1 & PW5 that they have duly corroborated each other in all material particulars and have deposed about the incident as also the role of each accused. No contradiction in the testimonies could be pointed out during their cross examination. As already observed above, the cross examination of these two witnesses itself is sufficient to hold that the incident had taken place and there was a

fight between the two parties. The cross case against the complainant side further acknowledges this fact.

13. It was pointed out by Ld. Counsel for the accused that independent witnesses were present at the time of incident, but they have not been cited as witnesses, particularly, one Manoj who was working as Carpenter in the house of the complainant and who had intervened in the quarrel. When the incident itself has been admitted by the accused and the cross case was got registered by them in respect of the same incident, there was no requirement of citing any independent witness to prove it. It is also a matter of record that both the parties sustained injuries. PW1 even admitted this fact in her cross examination that accused Devender, Neema and Narender (since deceased) had also sustained injury in the incident. Similarly, the contention of the Ld. Counsel that the other public witnesses namely Ran Pal, Rakesh and Lalit were not cited as witnesses, was also not necessary in view of the admissions by both parties regarding the incident.

14. It was also argued that the incident did not take place at the house of the complainant, but at the house of the accused.

The presence of Carpenter Manoj has not been denied by the accused in the cross examination of the two witnesses, rather it was pressed that he should have been made a witness. It is the case of PW1 & PW5 that he was working in their house and was making a table for their child. It shows that the incident had taken place at the house of the complainant and not of the accused as argued.

15. Ld. Counsel for the accused further submitted that PW2 Dr. Kakkar did not denied the possibility that Geeta could have sustained injury by hitting her head on a hard surface. It was submitted that during the scuffle in the incident her head struck with the wall and she sustained injury which fact finds corroboration in the testimony/opinion of PW2. I do not agree with this submission since the doctor only gave an opinion and that too, about a possibility which cannot replace the concrete evidence and testimony of PW1 & PW5 who clearly deposed that the injury was suffered by PW1 as a result of the blow given on her head by accused Neema. It is further a settled law that ocular evidence has to be given preference over the medical evidence. In *Chikkegowda & Ors. v. State of Karnataka Etc. (Neutral Citation: 2025 INSC*

1213), the Three-Judge Bench comprising Hon'ble Justice Vikram Nath, Justice Sanjay Karol, and Justice Sandeep Mehta observed as under:-

*“It is well settled that if there is a conflict in the ocular testimony and the medical testimony/evidence, it is the ocular evidence which will prevail unless found to be totally unreliable.”*

16. In the instant case, as observed above the testimony of PW1 and PW5 is not only reliable and trustworthy but they both have corroborated each other in all material particulars including the role of each accused. The factum of incident has not been denied by the accused.

17. Thus, the mere opinion or possibility of injury sustained by PW1 by any other mode is inconsequential in light of the direct and reliable evidence of PW1 & PW5.

18. It was also argued that the weapon of offence i.e. iron rod was never recovered during investigation. It is also now well settled that recovery of weapon is not necessary in case the direct evidence of the witnesses regarding the use of the said weapon is reliable and trustworthy, as in the instant case. Reference can be

made to the judgment in *State v Laly @ Manikandan [Criminal Appeal Nos. 1750-1751 OF 2022, dated 14.10.2022]*, wherein it was held that “*the recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused*”. The Hon’ble SC held that even in the absence of recovery of weapon, the accused can be convicted if there is direct evidence in the form of eye witness and there can be a conviction on the basis of the deposition of the sole eye witness, if the said witness is found to be trustworthy and/or reliable.

19. The accused have been charged for the offence under Section 308/34 IPC. Section 308 IPC reads as under: -

*“Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

20. The Section requires proof that the act was committed with such intention and knowledge that, if death had occurred, it

would have amounted to culpable homicide. The first part of Section 308 IPC applies even if no injury is caused, provided the requisite intent is proven. Conversely, a serious injury without this specific intent may fall under Section 323 or 325 IPC. The Courts examine the weapon used, the force applied, and whether there was pre-meditation or a sudden or trivial quarrel to determine the true nature of the offence. It is the case of the prosecution that the accused had come prepared and accused Neema was armed with an iron rod when she entered the house of complainant. It shows that the fight was pre-meditated and the accused had come prepared armed with weapon.

21. It is thus, clear that the accused had not only entered the house of the complainant but have given beatings to her and her husband Brijesh and accused Neema, in furtherance of her common intention with other accused, had given a blow with the iron rod on the head of Geeta. Head of a person is a delicate part and any injury there can be fatal, particularly if given with a weapon like rod. Though an iron rod in itself is not a lethal weapon but if the blow is

given with such force on the vital part of the body like head, it can prove to be fatal. All these facts demonstrate that the accused had intention and knowledge to cause injury upon the injured and thus, they are liable to be convicted for the offence punishable under Section 308/34 IPC. It has already been held that the accused had entered the house of the complainant, with preparation to commit an offence and therefore, they are also liable to be convicted for the offence punishable under Section 452/34 IPC.

22. The accused have also been charged for extending threats to the complainant. PW1 in her deposition did not allege that any of the accused extended any threats to her or her husband. PW5 simply deposed that while fleeing, the accused threatened him if they will lodge any complaint with the police. However, he never deposed the exact nature of threat or the words used by the accused. His deposition in this context is totally vague and general and therefore, no conviction of the accused can be based on such deposition for the offence punishable under Section 506/34 IPC.

23. In light of the above discussion and findings, it is held that the prosecution has been able to prove its case against both

accused Devender and Neema @ Champa Joshi for the offence punishable under Section 308/452/34 IPC, beyond reasonable doubt. They are accordingly held guilty and convicted for the said offences. However, they are acquitted for the offence punishable under Section 506/34 IPC.

*ANNOUNCED IN OPEN COURT  
ON 10<sup>th</sup> day of March, 2026*

**(SANJAY SHARMA-I)  
PRINCIPAL DISTRICT & SESSIONS JUDGE  
NORTH EAST DISTRICT  
KARKARDOOMA COURTS, DELHI**