

**IN THE COURT OF MS. TWINKLE WADHWA
ADDL. SESSIONS JUDGE-02 (NORTH EAST)
KARKARDOOMA Courts : DELHI**

SESSIONS CASE No.	444/2022
FIR No.	276/2018
Police Station	Seelampur
Under Section	341/308/34 IPC
Instituted on	21.12.2022
Argued on	21.04.2026
Decided on	02.05.2026
Final Order	Accused Asif is convicted u/s 323/341 IPC. Accused Waseem is acquitted for the charged offence.

- State Vs.**
- 1. Waseem S/o Mohd. Yameen
R/o T-218, Gali No. 2 Gautam Puri, Delhi
Seelampur, Delhi.**
 - 2. Mohd. Asif S/o Mohd. Yameen,
R/o T-218, Gali No. 2 Gautam Puri, Delhi
Seelampur, Delhi**
 - 3. Hasim S/o Mohd. Nawab
R/o R/o T-214, Gali No. 2 Gautam Puri, Delhi
Seelampur, Delhi (Expired)**

For State : Sh. Abhishek Pandey, Additional Public Prosecutor
For Defence: Sh. Waseem Khan, Ld. Counsel for both the accused.

JUDGMENT

1. By way of this judgment, this Court shall decide the charges levelled against the both the accused under sections 341/308/34 IPC.

Brief facts of the case

2. On receipt of DD No. 79-B dt. 23/24.08.2018 regarding a quarrel at Gautampuri, SI Naveen Kumar alongwith ASI Mahender Singh reached the spot and came to know that injured Mohsin had already shifted to JPC Hospital. As per the prosecution of the case, complainant had lent Rs. 5000/- to accused Hasim (expired) who is son of his *tau*. He was repeatedly asking for his money back but he was making excuses. On 23.08.2018 at around 11.00 pm, accused Hasim called him for Eid ki dawat and also informed him to take back his money. Then Complainant reached near the shop of Raja Biryani, accused Hasim was standing there alongwith his associates who had hockey and *dandas* in their hands. They stopped his scooty and started beating him with hockey, *dandas*, fist and blows. Complainant got unconscious at the spot. He received injuries on his head, hand and feet. Then, he was taken to JPC Hospital. Thereafter, the police officials reached the hospital, collected the MLC of the injured Mohsin but as he was not in a fit condition to give his statement, no statement was recorded at that time.

3. On the next day i.e. 24.08.2018, injured Mohsin came to PS Seelampur

and got his statement recorded, on the basis of which rukka was prepared by the IO and sent for registration of FIR. After completion of investigation, charge sheet was filed.

Charge

4. Vide order dated 20.02.2023, charge was framed against both the accused for the offences under sections 341/308/34 of IPC. The accused persons have pleaded not guilty to the said charges.

Witnesses Examined

<u>Sr. No</u>	<u>Prosecution witness No.</u>	<u>Name of witness</u>	<u>Description</u>
1	PW-1	Mohsin	Proves incident, assault, identity of accused, and role of co-accused (core ingredient of offence).
2	PW-2	ASI Mahender Singh	Proves police action, arrest of accused, and steps in investigation.
3	PW-3	SI Rajender Dhama (Retd.)	Proves compliance of investigation (41A notices, interrogation, filing of charge-sheet).
4	PW-4	Retd. ASI Fateh Singh	Proves registration of FIR (formal proof of case institution).
5	PW-5	SI Naveen Kumar	Proves initial investigation, spot visit, statement recording, and arrest.
6	PW-6	Dr. Anshuman Kumar	Proves nature of injury (simple), medical corroboration of assault.

Exhibited Documents

<u>Sr. No.</u>	<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by/Attested by</u>
1	Ex. PW1/A	Statement of complainant	PW-1 Mohsin

		Mohsin (basis of FIR)	
2	Mark X / Ex. PW5/B	Site Plan of place of incident	PW-5 SI Naveen Kumar
3	Ex. PW2/A	Arrest Memo of accused Hasim	PW-2 ASI Mahender Singh
4	Ex. PW2/B	Personal Search Memo of accused Hasim	PW-2 ASI Mahender Singh
5	Ex. PW2/C	Disclosure Statement of accused Hasim	PW-2 ASI Mahender Singh
6	Ex. PW3/A	Notice u/s 41A Cr.P.C. issued to accused Waseem	PW-3 SI Rajender Dhama
7	Ex. PW3/B	Notice u/s 41A Cr.P.C. issued to accused Asif	PW-3 SI Rajender Dhama
8	Ex. PW3/C	Interrogation Report of accused Waseem	PW-3 SI Rajender Dhama
9	Ex. PW3/D	Interrogation Report of accused Asif	PW-3 SI Rajender Dhama
10	Ex. PW3/E	Pabandinama (bond) of accused Waseem	PW-3 SI Rajender Dhama
11	Ex. PW3/F	Pabandinama (bond) of accused Asif	PW-3 SI Rajender Dhama
12	Ex. PW4/A	Endorsement on rukka	PW-4 Retd. ASI Fateh Singh
13	Ex. PW4/B	Computerized copy of FIR	PW-4 Retd. ASI Fateh Singh
14	Ex. PW5/A	Endorsement made by IO on statement of complainant (rukka)	PW-5 SI Naveen Kumar
15	Ex. PW5/C	DD No. 79-B (PCR call entry)	PW-5 SI Naveen Kumar
16	Ex. PW6/A	MLC of injured Mohsin	PW-6 Dr. Anshuman Kumar

Prosecution Evidence

5. Prosecution has examined 6 (six) witnesses in this case.
6. PW-1 Mohsin deposed on oath that he is residing at H. No. T-666, Gali No. 10, Gautampuri, Delhi and is working as a scrap dealer. He stated that accused Hasim is the son of his tau and was known to him prior to the incident. He deposed that prior to the incident, accused Hasim had borrowed a sum of Rs. 5,000/- from him and despite repeated demands, he kept postponing the repayment on one pretext or the other. He further stated that on 23.08.2018, accused Hasim invited him on the pretext of an Eid gathering and also for returning the said amount, and called him near Raja Biryani Wala situated at Gali No. 4, Gautampuri, Delhi. He further deposed that at about 10:45–11:00 PM, he reached there on his scooty, where accused Hasim along with his associates namely Waseem and Asif and some other persons were already present. He correctly identified all the accused persons present in court. He stated that as soon as he reached, the accused persons stopped him and without any provocation started assaulting him. Accused Asif gave a blow on his head with an iron rod (sariya), while accused Waseem and other associates beat him with dandas. He deposed that due to the said assault, blood started oozing from his head and he sustained injuries on his head and body. After some time, he fell unconscious at the spot. He further stated that he regained consciousness in JPC Hospital, where he was under treatment and remained admitted for the entire night. He deposed that due to severe pain, he could not give his statement to the police on the same night. On the next day, he went to PS Seelampur

along with his family members and got his statement recorded by the police, which bears his signatures. He further stated that the police prepared documents on his statement and initiated proceedings in the present case. He affirmed that the accused persons present in court are the same persons who had assaulted him.

7. In cross-examination, PW-1 stated that he had lent Rs. 5,000/- in cash to accused Hasim but there was no written document or known witness to the transaction. He admitted that there was no CCTV camera installed at the place and that shops in the area usually close by evening, though there was light at the time of incident. He stated that there were about 5-6 persons present and not 10-12 as suggested. He denied that he had quarreled with accused earlier or had falsely implicated them due to enmity. He admitted that he became unconscious and therefore could not raise alarm or identify all persons clearly at that time but stated that he had seen the faces of accused persons. He further stated that he does not remember who took him to the hospital or when police visited him. He denied the suggestion that he is a bad character or that no such incident took place.
8. PW-2 ASI Mahender deposed that on the intervening night of 23/24.08.2018, he was posted at PS Seelampur as ASI. At about 11:00 PM, SI Naveen received a PCR call vide DD No. 79-B regarding a quarrel at Gautampuri. He accompanied SI Naveen to the spot, where they came to know that the injured had already been shifted to JPC Hospital. They reached the hospital and found injured Mohsin under treatment. SI Naveen collected the MLC and attempted to record

statement of the injured, however, injured was not in a position to give statement due to pain. On the next day, at about 01:00 PM, injured Mohsin came to the police station along with his family members and his statement was recorded. Thereafter, IO prepared rukka and got the FIR registered. The witness further deposed that he joined the investigation, visited the spot with IO and complainant, and later on 25.08.2018, accused Hasim was apprehended from his house at Gautampuri on the identification of complainant. Arrest memo Ex. PW2/A and personal search memo Ex. PW2/B bear his signatures. Disclosure statement of accused was also recorded.

9. In cross-examination, PW-2 stated that he had not made any departure entry regarding leaving the police station and volunteered that the call itself mentioned their departure. He stated that they remained in the hospital for about 45 minutes and returned thereafter. He admitted that no public person was joined in the investigation and no weapon of offence was recovered in the case. He further stated that he does not remember details such as width of gali or exact layout of the place. He stated that he had not entered inside the house of accused and does not remember who met IO inside the house. He admitted that the area is residential and somewhat crowded. He denied the suggestion that he never joined investigation or that all proceedings were conducted while sitting at the police station.
10. PW-3 Retd. SI Rajender Dhama deposed that on 23.08.2019, he was posted at PS Seelampur and the investigation of the present case was marked to him. He received the case file and after going through it, he

issued notices under Section 41A Cr.P.C. to accused persons namely Waseem and Asif. Both accused persons joined the investigation. He proved the notices as Ex. PW3/A and Ex. PW3/B bearing his signatures. He further proved the interrogation reports of accused persons as Ex. PW3/C and Ex. PW3/D and their pabandinama as Ex. PW3/E and Ex. PW3/F, all bearing his signatures. He also deposed that he obtained the result of MLC from JPC Hospital, wherein the doctor opined the injuries as simple. After completion of investigation, he prepared the charge-sheet and filed the same before the court. He correctly identified the accused persons present in court.

11. In cross-examination, PW-3 stated that he does not remember the exact date of issuance of notices under Section 41A Cr.P.C. He denied the suggestion that accused persons had not joined the investigation. He further denied that he had falsely implicated the accused or that he was deposing falsely. He stated that all proceedings were conducted as per law and documents were prepared during the course of investigation.
12. PW-4 Retd. Fateh Singh deposed that on 24.08.2018, he was posted as Duty Officer at PS Seelampur and his duty hours were from 08:00 AM to 04:00 PM. On that day, SI Naveen Tomar handed over one rukka to him, on the basis of which the present FIR was registered. He made endorsement on the rukka, which is Ex. PW4/A and bears his signatures at point A. He further deposed that the computerized copy of FIR is Ex. PW4/B and also bears his signatures at point A. After registration of the case, he handed over the copy of FIR along with original rukka to SI Naveen Tomar for further investigation.

13. In cross-examination, the witness stated that SI Naveen Tomar had come to the police station at about 11:00 AM and handed over the rukka to him at about 01:35 AM and that the FIR was handed over at about 03:00 AM. He stated that he does not know at what time SI Naveen left the police station. He denied the suggestion that he had not received or handed over the rukka or that he was deposing falsely.
14. PW-5 SI Naveen Kumar deposed that in the year 2018, he was posted as Sub-Inspector at PS Seelampur and on the intervening night of 23/24.08.2018, he was on emergency duty along with ASI Mahender Singh. On receipt of DD No. 79-B regarding a quarrel, they reached the spot near Raja Biryani, Gautampuri at about 11:15 PM and came to know that the injured had already been shifted to JPC Hospital. They proceeded to the hospital where injured Mohsin was found under treatment and he collected the MLC. As the injured was not in a condition to give statement due to pain, he returned to the PS. On 24.08.2018 at about 01:00 PM, injured Mohsin came to PS and narrated the facts, upon which his statement Ex. PW1/A was recorded. He made endorsement Ex. PW5/A and got the FIR registered. Thereafter, he along with complainant visited the spot and prepared site plan Ex. PW5/B at his instance and recorded his supplementary statement under Section 161 Cr.P.C. On 25.08.2018, he along with ASI Mahender and complainant went to the house of accused Hasim at H. No. T-214, Gali No. 1, Gautampuri, where accused was apprehended. On interrogation, accused Hasim disclosed involvement of co-accused Asif and Waseem. He recorded disclosure statement (Ex. PW2/C), arrested the accused vide memo Ex. PW2/A and conducted personal search vide memo Ex.

PW2/B. He further deposed that despite efforts, co-accused persons could not be traced and the weapon of offence could not be recovered. He also proved DD entry Ex. PW5/C and stated that subsequently he was transferred and handed over the case file.

15. In cross-examination, the witness stated that he had left the police station between 11:00–11:15 PM and reached the spot within 10 minutes. He admitted that the place of incident was a crowded area having shops and buildings and that there was no CCTV camera or street light available at the spot. He further admitted that no blood stains or case property were found at the spot and no photographs were taken. He stated that no public person joined the investigation. He further deposed that injured had already been shifted to hospital by PCR and he reached hospital at about 01:00 AM, but does not remember whether any other person was present with the injured. He also does not remember whether any arrival entry was made at the police station. He stated that complainant came alone to PS on the next day and later accompanied him to the spot. He denied the suggestions that he had prepared documents while sitting in the police station, that he had not visited the spot, or that the case is false and fabricated.
16. PW-6 Dr. Anshuman Kumar deposed that on 24.08.2018, he was posted at JPC Hospital and in MLC No. 1465 dated 24.08.2018, he had given opinion regarding the nature of injuries sustained by patient Mohsin. He proved the MLC as Ex. PW6/A which bears his signatures at point A and his stamp at point B. He stated that since no X-ray diagnosis or X-ray film was available at that time, the opinion was given on the

basis of available material and the nature of injuries was opined as simple, which is mentioned in the MLC.

17. In cross-examination, the witness stated that he has not undertaken any specialized course in neurosurgery or head trauma. He admitted that no X-ray was conducted and no photographs of injuries were taken. He further stated that he had not personally examined the patient. He admitted that the injuries mentioned in the MLC were simple in nature and not life-threatening. He also stated that such injuries can occur due to blunt trauma and may also be possible due to fall on ground, however, the injuries cannot be self-inflicted. He stated that he does not know the exact cause of injuries as mentioned in the MLC. He denied the suggestion that the patient was never examined or that he gave opinion at the instance of the IO.

Statement of accused persons

18. After examination of all the witnesses, statements of both accused under section 313 of Cr.P.C. have been recorded on 06.04.2026 to which he did not wish to lead defence evidence.

Findings and reasons

19. As per the case of prosecution, complainant had lent Rs. 5000/- to accused Hasim (expired) who is son of his *tau*. He was repeatedly asking for his money back but he was making excuses. On 23.08.2018 at around 11.00 pm, accused Hasim called him for Eid ki dawat and also informed him to take back his money. Then Complainant reached near the shop of Raja Biryani, accused Hasim was standing there

alongwith his associates who had hockey and *dandas* in their hands. They stopped his scooty and started beating him with hockey, *dandas*, fist and blows. Complainant got unconscious at the spot. He received injuries on his head, hand and feet.

20. This witness is examined before the Court as PW-1. He deposed on the same lines as is mentioned in the FIR. He specifically deposed that he was stopped by accused persons and it was accused Asif who had given blow on his head with iron rod. He further specifically deposed that accused Waseem and Asif were accompanying accused Hasim at that time alongwith other persons. This witness has stood the test of cross examination. There is nothing in his testimony to conclude that he is not speaking truth. He has also deposed that prior to the present incident, no dispute had occurred between him and Hasim.
21. The case of prosecution is corroborated by MLC. It is mentioned on the MLC that injured was brought to the hospital by ASI Sunil (from PCR) and the date of examination is 24.08.2018. It is mentioned in the MLC that it is an assault by known persons. There is one CLW over the scalp. Further, it is also mentioned in the MLC that he has scratches also. It is also mentioned that he was in a panic mode. Further, as per the MLC, the nature of injury is simple.
22. Though it is the defence that there was a prior dispute between them due to which the present false complaint has been filed, this suggestion has been denied by PW1 Mohsin. Further, the nature of the prior dispute was not put to him in cross-examination. There is no specific motive imputed to him for falsely implicating the accused in the present

case. Hence, his testimony inspires complete confidence.

23. The accused is known to the complainant. There is no reason why he would falsely implicate the accused Hasim who is his family member unless for the truth. No cogent reason is given whereby imputing any motive to the complainant to depose falsely in the court.
24. It is argued that it was a crowded area, but no public persons could be traced who had witnessed the incident. However, the incident happened in a *gali* at around after 11 p.m., when even the shops were closed. In such circumstances, the absence of any public persons who might have witnessed the event cannot be ruled out. As far as accused Hasim is concerned, he has already expired during the trial. It is specifically mentioned that both accused had come with Hasim. A specific role is also assigned to Asif, that he had given a *danda* blow on his head. However, the role of the accused Waseem is not stated by the complainant in his deposition before the court. It is stated by PW1 in his cross-examination that Hasim was accompanied by 10 to 12 persons, but only 5 to 6 persons, including the accused persons, had attacked him. In such circumstances, when all the persons present were not involved in hitting the complainant, it was expected from complainant to clearly state the role of each accused in the incident, which becomes more relevant when the MLC does not corroborate the version of the complainant.
25. As per the MLC, there is only one CLW over the head thereby indicating, at the maximum, a single *danda* blow. However, as per the complainant, he was given beatings with *dandas*, lathis, legs, and fists.

However, this version is not supported by the MLC on record. As per the MLC, there is one wound over the scalp and scratches. It is not mentioned in the MLC that there are such injuries on his body which show that he was beaten with iron rods, dandas, and lathis. In view of the absence of any specific allegations and specific role assigned to Waseem, it is difficult to say that he was involved in the offence. While the offence stands proved against accused Asif u/s 323/341 IPC.

26. It is also argued that, as stated by PW5/IO in his cross-examination, there was no street light on the street; hence, it was not possible for the complainant to identify the accused persons. However, this aspect could have been explained by PW1 Mohsin himself, had it been put to him in cross-examination. This question ought to have been asked from Mohsin, who could have clarified the same, but it was never put to him. Hence, the argument at this stage that he could not have identified the other accused who were not known to him, due to absence of street lighting, cannot be sustained.

Offence u/s 308 IPC

27. The prosecution case, even if taken at its face value, does not inspire confidence so as to bring home the conviction u/s 308 IPC involving intention or knowledge to cause death.
28. It is the deposition of complainant, about 10–12 persons were present at the spot, out of whom 5–6 persons allegedly gave beatings to the injured. However, the medical evidence, as reflected in the MLC, records only a single CLW (lacerated wound) on the head along with

minor scratches. This stark inconsistency between the ocular version and medical evidence assumes significance. Had the injured been assaulted by multiple persons in the manner alleged, the natural and probable consequence would have been multiple injuries of a serious nature on various parts of the body. The presence of only one simple lacerated wound and superficial scratches renders the testimony of complainant exaggerated and doubtful.

29. Further, the nature of injury is also relevant to infer intention. A solitary injury, even if on the head, without any repetition of blows and not shown to be sufficient in the ordinary course of nature to cause death, does not, by itself, lead to an inference that the assailants intended to cause death or possessed the requisite knowledge contemplated for offences such section 308 IPC. The absence of multiple blows, the lack of severity in injuries, and the overall medical record negate the existence of such *mens rea*.
30. Equally important is the failure of the prosecution to attribute specific roles to the accused persons except Asif. The complainant/injured has made only a vague and omnibus allegation that 5–6 persons gave beatings. There is no clear assertion as to which accused inflicted which injury, what weapon, if any, was used, in what manner the assault was carried out, or how the injuries were caused. In cases involving multiple accused, it is incumbent upon the prosecution to establish either specific overt acts or circumstances indicating a common intention or common object. In the absence of such particulars, mere presence in a group or a general allegation of assault is insufficient to

fasten criminal liability for a serious offence.

31. The testimony of complainant is vague regarding the role assigned to accused Waseem. He is hereby acquitted for the charged offence.
32. As far as accused Asif is concerned, there is specific allegation against him that he had given a danda blow on the head of complainant which resulted in simple injury to him, hence is hereby convicted for offence u/s 323/341 IPC.

Conclusion

33. In the overall circumstances of the case, accused Asif is hereby convicted for offence u/s 323/341 IPC. Further, accused Waseem is hereby acquitted for the charged offence.

Announced in Open Court
as on 02.05.2026

(Twinkle Wadhwa)
Additional Sessions Judge-02
North East, Karkardooma Courts, Delhi