

IN THE COURT OF MS. VANDANA:
ADDL. SESSIONS JUDGE-02(NORTH):
ROHINI DISTRICT COURTS : DELHI

In the matter of:-

(Sessions Case No. 467/2022)

FIR No.	91/2019
Police Station	Bhalswa Dairy
Charge sheet filed Under Section	308 IPC
Charge framed Under Section	308 IPC

State V/s Pardeep Saxena
S/o Lala Ram Saxena
R/o Gali No.2, Samta Vihar,
Mukundpur, Delhi.
.....Accused

Date of institution	07.06.2022
Arguments concluded on	14.03.2026
Judgment Pronounced on	14.03.2026
Decision	Acquitted

JUDGMENT

BRIEF FACTS

1. Events which set the prosecution machinery into motion are that on 24.02.2019, on receipt of DD No.90A ASI Gyanender along with Ct.Mohit went to the spot of incident i.e. Gali No.2, Samta Vihar, Delhi, where they came to know that injured had already been taken to hospital by PCR. Thereafter,

they went to BJRM Hospital and collected the MLC of the injured Ashwani, who due to pain, refused to give statement. On 28.02.2019, injured Ashwani came to PS and gave his statement.

After recording the statement of the witnesses and on completion of the investigation, the charge sheet was filed under Section 308 IPC, by the Investigating Officer.

CHARGE

2. On committal of the case to the Court of Sessions, vide order dated 04.11.2022 charge under Section 308 IPC was found to be made out against accused. The formal charges as above were framed against the accused on the said date to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

3. Thereafter, prosecution in support of its case have examined 07 witnesses in all.

Sl. No.	Prosecution witness No.	Name of witness	Description
1.	PW1	Sh. Ashwani Saxena	Complainant/victim
2.	PW2	Sh. Naresh Kumar	Eye witness
3.	PW3	HC Mohit	Police witness
4.	PW4	ASI Randhir Singh	Duty Officer
5.	PW5	Dr. Mukesh Mandal	Doctor
6.	PW6	SI Ram Kishan	IO of the case

7.	PW7	ASI Gyanender	Initial IO of the case
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PW1 Sh. Ashwani Saxena is the complainant, whose deposition is as under:

“On 24.02.2019 at about 8:45 PM, Pooja Saxena/my wife and Pradeep Saxena/bua ka ladka had given beating me. Local police was called and I was medically examined.

On 24.02.2019 after performing my duties I returned to my house from Wazirpur Depot. In the gali where my house is situated I met accused Pradeep Saxena who offered me liquor for drinking. I alongwith accused Pradeep Saxena went to a park and we drink liquor. Both of us drink one quarter each. After drinking liquor with accused Pradeep Saxena I went to my house and went to my bed. When I woke up I saw my wife indecent condition with accused Pradeep Saxena. When both of them saw me that I woke up. Both of them attacked me. My wife Pooja Saxena caught hold me and accused Pradeep Saxena hit hammer on my head repeatedly. Accused Pradeep Saxena hit hammer at 5-6 places of my head. I raised noise to call my brother Naresh Saxena. By the time my brother Naresh Saxena reached in a room, Pooja opened the door and accused Pradeep Saxena pushed my brother away from the gate and he ran away out of my house.

Accused is present in the court today (correctly identified by the witness).

Police recorded my statement which is Ex. PW1/A bearing my signature at point A. police prepared site plan at my instance which is Ex. PW1/B bearing my signature at point A. Accused was

arrested vide arrest memo and personal search memo which are Ex. PW1/C and Ex. PW1/D respectively bearing my signature at point A.

I can identify the case property i.e. hammer if shown to me.

At this stage, MHC (M) has produced one hammer in unsealed condition. The same is shown to the witness, who correctly identified the same collectively Ex. P1. Witness stated that it is the same hammer by which injury was caused to him in his head”.

He was duly cross examined by Id. Counsel for the accused.

PW2 is Sh. Naresh Kumar, whose deposition is as under:.

‘Injured Aswani is my younger brother. Accused Pardeep present in the court today (correctly identified by the witness), is the son of my aunt (bua). I along with my brother reside at the aforesaid address.

On 24.02.2019 at about 8.10-8.20 p.m. I came back to my home from my job. I was taking rest after having dinner. At about 9.00 p.m. I heard the noise of quarrel which was coming from the room of my younger brother Ashwani. I immediately came out from my room and saw that accused Pradeep was running away from the room of my younger brother. Pradeep was not carrying anything in his hand. I went inside the room of my younger brother Ashwani and saw that blood oozing out from the head of my brother. I asked my brother Ashwani as to how he has sustained injury in his head. My brother Ashwani told me that accused Pardeep had caused injury in his head with a hammer (hathori). I immediately dialed at 100 number. After some time

police reached at the spot. My brother Ashwani was taken to BJRM Hospital. Police recorded my statement. At this stage, Ld. Addl. PP for the State seeks permission to cross examine the witness as he is not disclosing the complete facts”.

He was duly cross examined by Ld. Addl. PP for the State as he is resiling from his earlier statement.

He was also duly cross examined by Id. Counsel for the accused.

PW3 is HC Mohit. He deposed that on 24.02.2019 HC Gyanander Singh received DD No. 90A and thereafter he alongwith HC Gyanander reached at the spot at Gali No. 2, Samta Vihar, Mukundpur, Delhi where they came to know that injured had already been taken to BJRM Hospital. On this information, he alongwith HC Gyanander reached at BJRM Hospital and HC Gyanander collected the MLC of injured Ashwani Kumar. HC Gyanander asked injured Ashwani to give statement but he told that he was not in a condition to give the statement due to head injury. Thereafter they came back to PS. Later on IO/ASI Ram Kishar recorded his statement at PS.

He was duly cross examined by Ld. Counsel for accused.

PW4 is ASI Randhir Singh. He has deposed that on 28.09.2019, at about 07:35 PM HC Gyanander came with the rukka for registration of FIR. He got fed the contents of rukka in computer through computer operator and computer generated copy of FIR is Ex, PW4/A. He made endorsement Ex PW4/B on

the rukka. He gave certificate U/s 65B of Evidence Act Ex.PW4/C. He handed over the copy of FIR and copy of FIR and original rukka to ASI Ram Kishan for handing over the same for further investigation.

He was duly cross examined by Ld. Counsel for accused.

PW5 is Dr. Mukesh Mandal. He deposed that on dated 24.02.2019 patient Ashwani aged about 35 years got in casualty with alleged history of physical assault. The patient was initially examined by Junior Resident doctor Ankit Tiwari under his supervision vide MLC No. 166981 Ex.PW5/A. He further deposed that Dr. Ankit Tiwari already left the hospital and he can identify his signature as he had worked with him. He further deposed that as per MLC the injury was opined as simple.

He was duly cross examined by Ld. Counsel for accused.

PW6 is SI Ram Kishan. He deposed that on 28.02.2019, investigation of the present case was assigned to him. During investigation, he reached at the spot i.e. Gali No.2, Samta Vihar, near Masjid Mukundpur, Delhi, at about 6-6.30 p.m. along with HC Gyanender and complainant Sh.Ashwani. He prepared site plan of the spot Ex.PW1/B, at the instance of the complainant. He further deposed that on the same day, accused Pradeep Saxena was arrested by him from his house in Gali no.2. Samta Vihar, Mukundpur, Delhi, in the presence of complainant Ashwani and HO Gyanender vide arrest memo Ex.PW1/B.

Personal search of accused was also conducted vide memo Ex.PW1/D. He further deposed that accused pointed out the place of occurrence vide memo Ex.PW6/A. Accused was interrogated and he disclosed that he can get recovered the hammer (hatori) from near the bricks near his house. Disclosure statement Ex.PW6/B of accused was recorded. Thereafter, accused got recovered a hammer from near bricks in the gali near his house. The recovered hammer was seized vide seizure memo Ex.PW6/C. He further deposed that during investigation, he recorded statement of witnesses and collected the attested copy GD No. 90A dated 24.02.2019 ExPW6/D.

He had identified the case property i.e. hammer is already Ex.P1.

PW7 is ASI Gyanender. He deposed that on 24.02.2019, at around 7.45 p.m., he received DD No.90A and he along with Ct.Mohit went to the spot of incident i.e. Gali No.2, Samta Vihar, Delhi, he came to know that the injured had already been taken to the hospital by PCR. Thereafter, he along with Ct.Mohit went to BJRM Hospital. He collected the MLC of the injured Ashwani and due to pain, he refused to give his statement and will come to the PS later on to give his statement.

He further deposed that on 28.02.2019, the injured Ashwani came to the PS and gave his statement. He prepared rukka on the said statement Ex.PW7/A. He got the FIR registered and further investigation was marked to ASI Ram Kishan on the directions of the SHO. He further deposed that he along with ASI

Ram Kishan and Aswani went to residence of accused Pradeep in Gali No.2, Samta Vihar in search of accused. Injured identified the accused and he was present there. Thereafter, IO interrogated him and arrested him vide arrest memo and personally searched him vide memos Ex.PW1/C and Ex.PW1/D respectively. He further deposed that IO also recorded his disclosure statement Ex.PW6/B. He further deposed that IO interrogated the accused regarding the weapon of offence i.e. hathoda and accused showed one debris of brick (intton ka dher), from that debris, accused Pradeep took out one hathoda and handed over the same to the IO. IO seized the same vide seizure memo Ex.PW6/C. Accused was also taken to the spot of incident prior to the abovesaid recovery and he showed the spot of incident to the IO vide pointing out memo Ex.PW6/A. Thereafter, they came back to PS. He identified the hammer is Ex.P1.

Documents produced on behalf of prosecution

Ex.PW1/A	Statement of the complainant
Ex.PW1/B	Site plan
Ex.PW1/C	Arrest memo of accused
Ex.PW1/D	Personal search memo of accused
Ex.PW2/A	Statement of PW Naresh Kumar
Ex.PW4/A	Copy of FIR
Ex.PW4/B	Endorsement on rukka
Ex.PW4/C	Certificate under Section 65B Indian Evidence Act
Ex.PW5/A	MLC of the injured/ complainant
Ex.PW6/A	Pointing out memo of the place of occurrence

Ex.PW6/B	Disclosure statement of accused
Ex.PW6/C	Seizure memo of the hammer
Ex.PW6/D	Copy of GD No.90A
Ex.PW7/A	Rukka

List of Material Objects

Ex.P1	Hammer
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STATEMENT OF ACCUSED UNDER SECTION 313 Cr.P.C

4. After closure of PE, the statement of the accused was recorded u/s 313 Cr.P.C. on 12.03.2026 wherein he denied all the evidence put to him and stated that he has been falsely implicated in the present case. He further stated that Ashwani had taken alcohol in excess amount, due to which he accidentally fell on the floor of the under construction site.

Accused opted not to lead any defence evidence.

5. Thereafter, matter was fixed for final arguments.

6. I have heard Dr. Sarita Rani, Ld. Addl. PP for the State and Sh.K.K. Sharma, ld. Counsel for accused.

ARGUMENTS ADVANCED BY LD. ADDL. PP FOR THE STATE

7. It was argued by **Ld. Addl. PP for State** that the allegations levelled against the accused are of serious nature and

the prosecution has proved its case from the testimony of the witnesses.

It was further argued that all the police officials have clearly proved the chain and the manner of investigation and merely because the witnesses are police officials their testimony cannot be disbelieved.

ARGUMENTS ADVANCED BY LD. COUNSEL FOR ACCUSED.

8. On the other hand, Ld. Counsel for accused has argued that accused has been falsely implicated. It was further argued that there are material contradictions in the testimony of the prime prosecution witness PW1. It was further argued that recovery has been falsely planted upon the accused. It was further argued that there is no incriminating evidence against the accused and the prosecution has failed to prove the case beyond reasonable doubt. Accordingly, accused deserves acquittal.

9. I have heard the arguments at length and perused the entire record.

FINDINGS

10. Accused had been charged under Section 308 IPC. The relevant Sections is reproduced as under :

SECTION 308 IPC

“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.”.

PRESUMPTION OF INNOCENCE

11. It is a settled law of criminal jurisprudence that a person is believed to be innocent till the guilt is proved against him. This principle is called **The Presumption of Innocence**. In another words, the accused is entitled to take advantage of reasonable doubt in respect of his crime. The principle finds its genesis in the ***Declaration of Human Rights*** under Article 11 Section 1 incorporated by the United Nations in 1948. It is also mentioned in the European **Convention for the Protection of Human Rights** in Article 6 Section 2 and United Nations International Covenant on Civil and Political Rights under Article 14, Section 2.

Presumption of Innocence is a re-statement of the rule that in criminal matters the prosecution has the burden of proving guilt of the accused in order to be convicted of the crime of which he is charged.**Acquitted**

In Chandrashekhar Vs. State of Himachal Pradesh

decided on 06.07.2018 relying on judgment of Data Ram Singh Vs. State of UP passed by the Hon'ble Supreme Court on 06.02.2018, it was held that:

“the freedom of an individual is utmost important and cannot be curtailed specially when guilt if any, is yet to be proved. It is settled law that till such time guilt of a person is proved, he is deemed to be innocent..... A fundamental postulate of criminal juris prudence is a presumption of innocence meaning thereby that a person is believed to be innocent until found guilty.....

Thus, the inference which is culled out from the above is that it is for the prosecution to prove the guilt of the accused beyond reasonable doubt.

12. In this backdrop, I proceed to delve upon the evidence adduced on behalf of the prosecution.

13. The prosecution has heavily relied upon the testimony of **PW1/complainant Ashwani Saxena**. In the complaint Ex.PW1/A, it was complained by him that the accused invited him to have drink together, upon which both of them, having purchased liquor, went to the nearby vacant plot and had drinks. Thereafter, accused came to drop the complainant at his house but at the time when he was dropped, accused started abusing him, on being opposed by the complainant, accused started manhandling him and then finding one hammer nearby, he hit the same on his head. Then, he ran away with the said

hammer. But, when he was examined in the court, he deposed a different story altogether which is as under:

“.....On 24.02.2019 after performing my duties I returned to my house from Wazirpur Depot. In the gali where my house is situated I met accused Pradeep Saxena who offered me liquor for drinking. I alongwith accused Pradeep Saxena went to a park and we drink liquor. Both of us drink one quarter each. After drinking liquor with accused Pradeep Saxena I went to my house and went to my bed. When I woke up I saw my wife indecent condition with accused Pradeep Saxena. When both of them saw me that I woke up. Both of them attacked me. My wife Pooja Sexena caught hold me and accused Pradeep Saxena hit hammer on my head repeatedly. Accused Pradeep Saxena hit hammer at 5-6 places of my head. I raised noise to call my brother Naresh Saxena. By the time my brother Naresh Saxena reached in a room, Pooja opened the door and accused Pradeep Saxena pushed my brother away from the gate and he ran away out of my house.”

From the above-said testimony of the complainant/PW1, it is evident that the complainant/PW1 has not only made a vast improvement in his complaint but the said improvement is altogether different from his compliant Ex.PW1/A, which was recorded in the court. In his complaint, there is no mention of his wife or dropping the complainant by the accused at his house. According to the complaint, while dropping the complainant, the accused started abusing him, which was opposed by the complainant and the said issue became the cause of the alleged

incident. But, in contrary, according to the testimony of the complainant, he was dropped by the accused at home. After taking liquor, he went to his bed. When he woke up, he saw his wife in an indecent condition with accused, which has been said to be the reason of the alleged incident. Therefore, evidently, the complaint and the testimony of the complainant are altogether different and contrary to each other.

Further, it is true that the name of the wife of the complainant was not in the complaint but when it was brought in the light by the complainant vide his testimony alleging that his wife Pooja Saxena caught hold of him and only then accused Pardeep Saxena hit on his head with hammer repeatedly, than also, despite having above-said fact on record, no application was moved by the prosecution to cite her name as a prosecution witness.

PLACE OF INCIDENT:

A perusal of the complaint Ex.PW1/A reflects that the place of incident is the street i.e. outside the house of the complainant, though, on the other hand if we look at the testimony of the complainant, it was inside the house of the complainant where alleged incident took place.

INJURY CAUSED TO THE COMPLAINANT

In the testimony, it has been testified by the complainant that accused hit him on his head repeatedly with

hammer. However, as per the MLC Ex.PW5/A, the injury is found to be simple. When PW5 was examined on this aspect, he categorically testified that such kind of injury can be caused due to fall on some concrete surface or in collision with building material or bricks or some edged on the wall.

Further, there is no photograph of the injury sustained by the complainant. It is also deposed by the complainant he was discharged on the same day from the hospital.

It is also relevant to mention here that as per MLC Ex.PW5/A, at the time of medical examination, complainant was accompanied by ASI Kishan (PCR) on 24.02.2019 (though the complaint was filed on 28.02.2019), but he was not made a witness in the present case.

RECOVERY OF WEAPON OF OFFENCE:

It was argued by Id. Counsel for the accused that the weapon of offence i.e. hammer has not been seized as per law. The said fact is found to be correct as the case property was produced in an unsealed condition and PW6 also testified that the hammer was not duly sealed by him.

Further, PW6 and PW7 both categorically deposed that no photograph or sketch of the weapon of offence was prepared during investigation. During cross examination when specific question was put to the witness in this regard both the investigating police officials testified that hammer Ex.P1 is easily

available in the market.

Surprisingly, weapon of offence was never sent to the FSL by the IO. Neither it has been testified that the said hammer was blood stains on it.

PLACE OF RECOVERY OF WEAPON/HAMMER

PW6 testified that hammer/hathodi was recovered vide disclosure statement of accused from near bricks near his house. Now, it is pertinent to note that the complaint is dated 24.02.2019 Ex.PW1/A and seizure memo of weapon of offence is Ex.PW6/6 dated 28.02.2019. It is unbelievable that accused after committing the grave and heinous offence would put the weapon of offence in an open place which remained there for about 4 days. It is relevant here to note that no witness stated that there was blood on the same.

According to the complaint, accused found the hammer (hatodi) in the street and then it was hit on the head of the complainant, though, in his testimony, PW1 complainant has stated that when complainant woke up and saw his wife with accused Pardeep Saxena in an indecent condition, then accused Pardeep Saxena hit hammer on his head repeatedly which means that he got the same from the house of the complainant itself, which is self contradictory and creates a doubt over the story of prosecution.

Further, the complainant deposed that accused fled away with hammer. However, PW2/Sh.Naresh, brother of

complainant has deposed that he saw accused Pardeep Saxena running away from the room of the complainant but he categorically testified that accused was not carrying anything in his hands which creates strong doubt over the recovery of the said weapon from outside the house of complainant.

BLOOD STAINED CLOTHES OF ACCUSED

Alleged blood stained clothes of the complainant were never seized in the present case. PW1 duly admitted that he did not gave his blood stained clothes either to the police officials or at the time of his MLC. It is admitted that exhibits of the present case were never sent to FSL which can connect the accused with the present offence.

DELAY IN LODGING THE FIR:

According to Ex.PW1/A, the alleged incident took place on 24.02.2019, though, the complaint is of dated 28.02.2019. The complainant has mentioned no reason for the delay caused in filing the complaint, though, admittedly, he was discharged from the hospital on the same day.

NO INDEPENDENT WITNESS

There is no independent witness in this case. It was testified by PW6 and PW7 that no notice was served upon the public persons, who refused to join the investigation. The spot of incident has been stated to be a thickly populated area but there appears to be no sincere efforts which were made by police

officials concerned to join independent public witnesses in the concerned police proceedings at any of the available stages especially at the time of recovery of case property, alleged weapon of offence or at the time of arrest of accused. In this regard reliance is being placed on the following judgments:-

In case law reported as “**Anoop Joshi Vs. State**” 1992(2) C.C. Cases 314(HC), High Court of Delhi had observed as under:-

“18. It is repeatedly laid down by this Court in such cases it should be shown by the police that sincere efforts have been made to join independent witnesses. In the present case, it is evidence that no such sincere efforts have been made, particularly when we find that shops were open and one or two shop-keepers could have been persuaded to join the raiding party to witness the recovery being made from the appellant. In case any of the shopkeepers had declined to join the raiding party, the police could have later on taken legal action against such shopkeepers because they could not have escaped the rigours of law while declining to perform their legal duty to assist the police in investigation as a citizen, which is an offence under the IPC”.

In a case law reported as “**Roop Chand Vs. The State of Haryana**” 1999 (1) C.L.R. 69, the Punjab & Haryana High Court held as under:-

“3. I have heard the learned counsel for the parties and gone through the evidence with their help. The recovery of illicit liquor was effected from the possession of the petitioner during noon time and it is in the evidence of the prosecution witnesses

that some witnesses from the public were available and they were asked to join the investigation. The explanation furnished by the prosecution is that the independent witnesses were asked to join the investigation but they refused to do so on the ground that their joining will result into enmity between them and the petitioner". "4. It is well settled principle of the law that the Investigating Agency should join independent witnesses at the time of recovery of contraband articles, if they are available and their failure to do so in such a situation casts a shadow of doubt on the prosecution case. In the present case also admittedly the independent witnesses were available at the time of recovery but they refused to associate themselves in the investigation. This explanation does not inspire confidence because the police officials who are the only witnesses examined in the case have not given the names and addresses of the persons contacted to join it is a very common excuse that the witnesses from the public refused to join the investigation. A police officer conducting investigation of a crime is entitled to ask anybody to join the investigation and on refusal by a person from the public the Investigating Officer can take action against such a person under the law. Had it been a fact that the witnesses from the public had refused to join the investigation, the Investigating Officer must have proceeded against them under the relevant provisions of law. The failure to do so by the police officer is suggestive of the fact that the explanation for non-joining the witnesses from the public is an after thought and is not worthy of credence. All these facts taken together make the prosecution case highly doubtful".

Further, there is no CCTV footage in this case which can otherwise connect the accused with the alleged offence.

CONCLUSION

14. Since there are material contradiction in the testimony of prime witness of the prosecution case namely PW1 Ashwani Saxena, who is the victim/complainant and there is no technical evidence on record in the form of any CCTV Footage and considering the overall evidence on record, I have no hesitation in holding that the prosecution has been miserably failed to prove its case against the accused. Accordingly, accused Pradeep Saxena stands **acquitted** of the offence under Section 308 IPC.

15. File be consigned to the Record Room, after due compliance.

Dictated and announced in the open Court on 14.03.2026 (running into 20 pages)	(VANDANA) Addl. Session Judge-02 (North), Rohini Courts/Delhi
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