

**IN THE COURT OF MS. CHARU AGGARWAL: ADDITIONAL  
SESSIONS JUDGE-02: SHAHDARA DISTRICT:  
KARKARDOOMA COURTS, DELHI.**

SC No. 183/2019  
FIR No. 69/2017  
P.S. M.S. Park  
u/s 308/34 IPC

**State Versus**

**1. Amit Kumar**

s/o Sh. Ram Singh  
r/o B-14, Gali no.2,  
Jagat Puri, Shahdara,  
Delhi.

**2. Sachin Kumar (*since deceased*)**

s/o Sh. Ram Singh  
r/o B-14, Gali no.2,  
Jagat Puri, Shahdara,  
Delhi.

**Plea of accused:**

**Pleaded not guilty**

**Final order:**

**Acquitted**

**Date of Committal to Sessions Court : 09.04.2019**

**Date on which Judgment reserved : 21.04.2026**

**Date of pronouncement of judgment : 25.04.2026**

**J U D G M E N T**

1. Accused Amit has faced trial for the offence under Section 308 Indian Penal Code on the allegations that on 22.02.2017 at about 10.00 pm, he sharing common intention with co-accused Sachin (*proceedings against him abated*) caused simple injury on the head of complainant Ratan Deep @ Sanju with some pointed object. Both the accused were brothers. Victim and accused live in the same vicinity.

## **2. CASE OF THE PROSECUTION:**

2.1 The case of the prosecution is that on **22.02.2017** on receipt of DD No. 73 B, IO SI Baldev Singh along with HC Nizamuddin reached at the spot i.e. Gali no.2, Jagat Puri, Vishwakarma Gate, where they came to know that injured had been shifted to GTB hospital by PCR police officials. IO and HC Nizamuddin reached at GTB hospital; IO collected the MLC of injured Ratandeep *on which doctor declared him fit for statement*, but the injured could not give the statement at that time due to pain and said that he would give his statement in Police Station, accordingly the DD was kept pending.

2.2. On 24.02.2017, the injured gave his statement, stating that he resides with his family at House No. A-116, Gali No. 2, Jagat Puri, Mandoli Road, Shahdara, and is engaged in business. On 22.02.2017, at about 10:00 p.m., his brother-in-law (jija), Harish Kumar Verma, visited his house and parked his scooter outside the residence of the accused, Sachin and Amit. After meeting the complainant/injured, when his brother-in-law was leaving and went to retrieve his scooter, both accused Sachin and Amit began abusing and scuffling with him. They objected, stating that since their families were not on talking terms, he should not have parked his scooter outside their house.

2.3 Hearing the commotion, the injured came outside and saw the accused abusing and scuffling with his brother-in-law. He intervened to pacify the situation and sent his brother-in-law back home. This further agitated the accused, who threatened the injured, saying they would not

spare him. At that point, accused Amit instructed his co-accused/brother Sachin to bring a weapon from the house. Meanwhile, Amit started fighting with the injured. Sachin then returned with a sharp-edged weapon and struck the injured on the head of Ratandeep. Thereafter, both accused fled from the spot.

2.4 The injured immediately made a PCR call, following which a PCR van arrived and took him to GTB Hospital. Based on these allegations, an FIR under Section 308 IPC was registered against both accused. On 01.03.2017, both were arrested; however, the weapon of offence was not recovered. As per the MLC, the doctor opined that the nature of injury sustained by the injured was 'simple.'

### 3. COMMITTAL PROCEEDINGS

After completion of investigation, charge-sheet was filed 308 IPC before the concerned Metropolitan Magistrate, who after compliance of Section 207 Cr. PC, committed the case to Sessions Court as the offence under Section 307 IPC is Sessions Triable.

### 4. CHARGE FRAMED AGAINST ACCUSED

Upon committal, after hearing both the sides on the point of charge, vide order dated 09.09.2019, charge under Section 308 IPC was framed against accused, to which he pleaded not guilty and claimed trial.

*During the course of trial, accused Sachin had expired and proceedings against him were abated vide order dated 12.02.2024.*

## 5. PROSECUTION EVIDENCE

In order to prove its case, prosecution has examined as many as 05 witnesses.

5.1 **PW-1 is complainant/injured Ratandeep**, who has deposed that at the time of the incident, he was running an *Ata Chakki* shop from his residence. On 22.02.2017, he was sitting at his shop when his brother-in-law (jija), Harish Kumar, came to meet him. Since the street in front of the shop was under construction, Harish Kumar parked his scooter outside the house of the accused persons. After meeting PW-1 and receiving some books from him, Harish Kumar left.

Shortly thereafter, PW-1 heard a commotion outside and went out to see both accused persons abusing and scuffling with Harish Kumar at the spot where the scooter was parked. PW-1 intervened, after which Harish Kumar left the place. The accused then said to PW-1, “*Teri himmat kaise hui jija ko ghar bhej diya*” and started fighting with him. Accused Sachin went inside his house, returned with a sharp-pointed object, and struck PW-1 on the head, causing injuries. Both accused then fled from the spot.

PW-1 made a call to the police at 100 number, and PCR officials shifted him to GTB Hospital. He was discharged the next day. On 24.02.2017, he gave his statement (Ex. PW1/A). He further stated that about five years prior to the incident, the accused persons had also assaulted him. In court, PW-1 correctly identified both accused persons.

5.2 **PW-2 is Harish Kumar, brother-in-law of PW-1/Injured**, who has stated that on 22.02.2017, he went to his

in-laws' house to meet his brother-in-law (sala), Sanju Verma, on his scooter, which he parked outside a house in the gali. After meeting him, when he returned to his scooter, two persons standing there said to him, "*Dikhai nahi de raha, yaha road bani hai*" and began scuffling with him. Due to this, several public persons gathered at the spot. One of them informed his brother-in-law, who came there. On his advice, PW-2 left the spot.

PW-2 did not identify the accused persons in court. He was cross-examined by the Learned Additional Public Prosecutor regarding identification and other aspects. He denied all questions put to him. Regarding identification, he stated that due to darkness, he could not see the faces of the persons involved.

5.3 **PW3 HC Nizamuddin**, who has stated that on 22.02.2017, he was posted as Head Constable at P.S. M.S. Park. **He joined investigating with IO/SI Baldev Singh** and reached at the spot where they came to know that injured had been shifted to GTB hospital by PCR van. He along with IO reached at GTB hospital where they met injured who could not give his statement that time and told to IO that he would give his complaint in Police Station. After the treatment of injured, IO recorded his statement.

5.4 **PW4 is SI SheeshPal**, who on 24.0.2017 was working as **Duty Officer** at P.S. M.S. Park from 4.00 pm to 12.00 midnight. On that day at about 7.10 pm, IO SI Baldev came in the DO room and handed over this PW a rukka for registration of FIR, on the basis of which, FIR was registered on the computer. The computerized copy of FIR is Ex.

PW4/A, endorsement on the rukka is Ex. PW4/B and certificate u/s 65B of Indian Evidence Act is Ex. PW4/C.

5.5 **PW5 Dr. Iqbal Singh**, who has stated that he was posted in GTB hospital since 1995. He has been deputed by MS, GTB hospital to depose in this case. He has stated that during his tenure, he had worked with Dr. Saqib Shahab, Sr. Resident and had seen him while writing and signing. Dr. Saqib Shahab has already left the hospital. He has stated that on the MLC of injured, Dr. Saqib Shahab has given the opinion on the injury as '**Simple**' in nature in his handwriting and bearing his signatures. The opinion is Ex. PW5/A.

5.6 All the witnesses were cross examined by Ld. Defence counsel.

5.7 *On 05.09.2024 the accused Amit has admitted the MLC No. 3833/07/17 dated 23.02.2017 of patient/complainant Ratandeep.*

#### 6. STATEMENT OF ACCUSED.

After conclusion of prosecution evidence, statement under section 313 Cr.PC. of accused Amit, was recorded in which the entire incriminating evidence was put to him and he pleaded his innocence and claimed his false implication.

#### 7. ARGUMENTS.

7.1 Ld. Additional PP has argued that the accused be convicted as per law since the Victim/injured has supported the case of Prosecution to the hilt on the incident that accused Amit initially scuffled with him ,thereafter, instigated the co-accused Sachin (*since deceased*) to bring some weapon from the house and on his instigation, co-

accused Sahin (*since deceased*) hit some sharp-edged weapon on his head due to which blood starting oozing from his head and he sustained injuries. Therefore, it is argued that ingredients of section 308 IPC are made out against the accused Amit and he be convicted U/s 308 IPC i.e. the offence charged against him.

7.2 Per contra, Ld. Defence counsel has argued that the injured/complainant has falsely implicated the accused persons owing to prior enmity between the parties. This animosity is evident from the circumstances of the case, particularly the unexplained delay of two days in the registration of the FIR. Such delay, without any plausible explanation, casts serious doubt on the veracity of the prosecution's case and suggests that the FIR may have been lodged after deliberation and consultation, thereby diminishing its reliability.

7.3 It is further argued that no offence under Section 308 IPC is made out against the accused. The medical evidence itself records the nature of injury as *simple*, which is inconsistent with the allegation of a grievous assault with a sharp weapon. The absence of recovery of the alleged weapon of offence further weakens the prosecution's case, as it deprives the court of corroborative material evidence. The Learned Counsel has also emphasized that no independent or public witness has been examined by the prosecution, despite the incident allegedly occurring in a public street where several persons had gathered. The failure to produce such witnesses raises serious doubts about the prosecution's version and indicates

that the case rests solely on the testimony of the complainant, who is admittedly inimical towards the accused.

7.4 Attention has also been drawn to several contradictions and inconsistencies in the deposition of PW-1 (injured/complainant). These contradictions, according to the defence, strike at the root of the prosecution's case and render his testimony unreliable. Moreover, PW-2, who is the brother-in-law of the complainant and an alleged eyewitness, has categorically failed to identify the accused persons in court, stating that due to darkness he could not see their faces. His testimony, therefore, does not support the prosecution's allegations.

7.5 In light of these circumstances, namely, the delay in lodging the FIR, absence of independent witnesses, non-recovery of the weapon, contradictions in the complainant's testimony, and failure of PW-2 to identify the accused, the Learned Counsel has contended that the prosecution has failed to establish its case beyond reasonable doubt. Accordingly, it is submitted that the accused is entitled to the benefit of doubt and deserve to be acquitted.

8. I have considered the arguments advanced by Ld. APP and Ld. counsel for accused Amit and perused the entire record.

## 9. ANALYSIS

9.1 Accused Amit stands charged under Sections 308/34 IPC on the allegations that on 22.02.2017, he, along with his brother/co-accused Sachin (*since deceased*), initially engaged in a scuffle with the injured's brother-in-law (PW-2

Harish Kumar) and thereafter attacked the injured/complainant (PW-1 Ratandeep) with a sharp-edged weapon, thereby causing injuries.

9.2 The prosecution case primarily rests upon the testimony of PW-1 (victim/complainant Ratandeep) and PW-2 (Harish Kumar, brother-in-law of PW-1). PW-2 has supported the prosecution version only to the extent that two boys were scuffling with him at the place where he had parked his scooter. However, PW-2 turned hostile on the crucial aspect of identification of the assailants, stating that due to darkness at the time of incident, he could not see their faces.

9.3 Thus, the prosecution case hinges entirely on PW-1 Ratandeep but he is not found to be reliable and trustworthy witness. It is settled law that the conviction of accused can be recorded solely on the testimony of victim when his/her testimony is found to be reliable, trustworthy, unblemished, credible and evidence of sterling quality.

9.4 In **Suraj Mal versus The State (Delhi Admn.)**, AIR 1979 S.C. 1408, the Hon'ble Supreme Court has observed that conviction of accused cannot be based on the deposition of a witness who gives inconsistent statements at different stages. Relevant portion of case law is re-produced as under:

*“ Where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness.”*

9.5. Further, in the judgment reported as **Namdeo Daulata Dhayagude and Others v. State of Maharashtra**, AIR 1977 SC 381, it was held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

9.6. Also, in AIR 2012 SC 3157, **Rai Sandeep @ Deepu vs State of NCT of Delhi with Hari Singh v State of NCT of Delhi** while laying down the quality of a witnesses Hon'ble Supreme Court held as under:

*“Sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be more relevant would be the consistency of the statement right from the time when the witness makes the initial statement and ultimately before the Court.....The witness should be in a position to withstand the cross examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of occurrence, the person involved, as well as, the sequence of it...It should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of the circumstances, to hold the accused guilty of the offence alleged against him. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant material namely, oral documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve.”*

9.7 In the present case, as per the FIR, the allegations against accused Amit are that he, along with his brother/co-accused Sachin (since deceased), was initially abusing and scuffling with the injured's brother-in-law (PW-2 Harish Kumar). When the injured (PW-1 Ratandeep) intervened and sent his brother-in-law back home, both accused allegedly became agitated, threatened the injured, and Amit is said to have exhorted Sachin to bring a weapon from the house. In the meantime, Amit continued fighting with the injured, while Sachin returned with a sharp-edged weapon and struck PW-1 on the head.

9.8 However, a careful scrutiny of the evidence reveals significant inconsistencies. In his chief examination, PW-1 initially attributed the assault solely to accused Sachin, stating that Sachin attacked him with a sharp-edged weapon. He did not, at that stage, attribute any instigation or exhortation to accused Amit. It was only upon being confronted with leading questions by the Learned Additional Public Prosecutor that PW-1 admitted that Amit allegedly directed Sachin to fetch a weapon. Such an admission, elicited under suggestion, cannot be treated as substantive evidence and lacks independent probative value.

9.9 Further, during cross-examination, PW-1 contradicted himself by stating that at the time Sachin returned with the weapon, he was conversing with the brother of accused, (*As per prosecution case brother of Sachin is accused Amit*) and was not expecting any assault. The relevant portion of his deposition reads:

*“I had seen the accused Sachin carrying weapon at the distance of 100 meters. I had not tried to run away from the spot since I was talking with the brother of accused and was not expecting any assault. The brother of accused did not intervene into the matter.”*

9.10 The above statement is inconsistent with the allegation of instigation. If Amit had indeed exhorted Sachin to bring a weapon, it would naturally create apprehension of an imminent attack in the mind of PW-1. Yet, PW-1 himself admits that he was not expecting any assault and continued conversing with Amit. Such contradiction goes to the root of the prosecution case and undermines the alleged role of accused Amit.

9.11 It would also be relevant to mention that mere presence at the scene of the incident does not, by itself, attract liability under Section 34 of the IPC. For Section 34 IPC to apply, the prosecution must establish that the accused shared a *common intention* with the co-accused and actively participated in furthering that intention. The doctrine of common intention requires more than passive presence; it demands proof of prior meeting of minds or concerted action, whether pre-arranged or developed on the spot.

9.12 Section 34 IPC embodies the principle of joint liability, meaning that when a criminal act is carried out by several persons in furtherance of a common intention, each is held responsible as if they had committed the act individually. Courts have consistently emphasized that the essence of Section 34 lies in the existence of a common intention, which can be inferred from conduct, circumstances, and the nature of participation. However,

such inference must be drawn cautiously, ensuring that mere proximity to the crime scene or association with the principal offender is not mistaken for shared intent.

9.13 Thus, unless the evidence clearly demonstrates that the accused acted in concert with co-accused, sharing the same criminal design, Section 34 cannot be invoked. Here, the deposition of PW-1, at best, proves presence of accused Amit at the spot but not sharing of common intention with his brother/co-accused Sachin in assaulting PW-1.

10. Moreover, the prosecution has failed to produce any independent witness to corroborate the alleged exhortation. PW-2, who was present at the initial stage of the incident, did not support the prosecution on the identification of the accused, stating that due to darkness he could not see their faces. Thus, the only evidence against Amit is the inconsistent and contradictory testimony of PW-1.

11. Furthermore, PW-1 has been inconsistent about the nature of the weapon. In the FIR and chief examination, he referred to a “*sharp-edged weapon*,” but in his cross-examination he described it as a “*rod*.” A rod is not a sharp-edged weapon, and the two instruments are materially different. Courts have consistently held that minor discrepancies may be overlooked, but material contradictions which alter the substratum of the prosecution case cannot be ignored. Here, the change in description of the weapon is not a trivial lapse but a substantive inconsistency that casts doubt on the reliability of PW-1’s testimony.

11.1 Ld. APP has argued that rods can also be sharp-edged therefore specific disclosure of kind of weapon by PW-1 in his cross-examination is minor contradiction which cannot affect the prosecution case once PW-1 and PW-2, both have supported the case. This argument has no merit since the minor discrepancies can be overlooked by the courts but repeated and material are not. Here, pw-1 firstly, gave contradictory version on the role of accused Amit then he improvised his statement adding weapon of offence as rod which was never the case of the prosecution.

12. PW-1 claimed that his clothes and handkerchief were soaked in blood during the incident. However, these articles were never handed over to the Investigating Officer. Non-production of such vital corroborative evidence deprives the prosecution of material support and raises questions about the veracity of PW-1's claim. Courts have often emphasized that failure to produce physical evidence which could substantiate oral testimony weakens the prosecution case.

13. The incident allegedly occurred on 22.02.2017 and as per **DD NO. 73 B** reported by PW-1/injured immediately after the incident but he gave his Prime Statement (**Ex. PW1/A**) on the basis of which the FIR was registered only on 24.02.2017. PW-1 explained the delay by stating that he was unwell and in pain. However, the medical record (MLC) shows that he was fit for statement on the same day and was discharged from hospital the same day. This contradiction between medical evidence and the complainant's explanation creates serious doubt about the genuineness of the prosecution version. Delay in lodging

FIR, unless satisfactorily explained, is fatal as it gives room for embellishment, afterthought, and fabrication, especially in a circumstance when PW-1 has admitted in his cross-examination that 5 years back also there was some quarrel between both the sides due to alleged teasing of accused's sister by him (victim).

14. Further, from the evidence adduced on record, it is clear that there are several unexplained contradictions, improvement and discrepancies in the different statements/versions of the injured (PW-1), who happens to be the star witness of the prosecution. In view of this, the version put forth by injured (PW-1) can hardly be treated as trustworthy and reliable.

15. From the above discussion, the following points become evident: -

- The role of accused Amit is doubtful due to contradictory testimony of PW-1.
- The weapon of offence has not been consistently described, creating uncertainty about the nature of the assault.
- The absence of corroborative physical evidence (bloodstained clothes) and unexplained delay in FIR registration further erode the credibility of the prosecution case especially due to previous enmity between the parties.
- With PW-2 turning hostile on identification, the prosecution rests solely on PW-1, whose testimony suffers from material contradictions and lacks corroboration.

16. In view of above discussion as well as inconsistent evidence on record, suffice it to state that prosecution has failed to establish the guilt of the accused beyond reasonable

doubt against accused Amit. The benefit of doubt must necessarily go to the accused, as per settled principles of criminal jurisprudence, accordingly, accused Amit is acquitted for the offence under section 308/34 IPC. The accused is directed to furnish bonds under Section 437-A Cr.P.C. (corresponding to Section 481 of the BNSS) in the sum of Rs.25,000/- with one surety in the like amount, to remain in force for a period of six months, in accordance with law.

File be consigned to record room after due compliance.

CHARU AGGARWAL  
Digitally signed by  
CHARU AGGARWAL  
Date: 2026.04.25  
17:02:05 +0530

**Announced in the open  
Court on 25.04.2026**

**(Charu Aggarwal)  
ASJ-02/E-COURT  
Shahdara/KKD/Delhi.**

**Annexure:-**

In terms of “*Manojbhai Jethabhai Parmar (Rohit) Vs. State of Gujarat, Crl. Appeal No. 2973/2023*” passed by Hon’ble Apex Court, the tabulated charts are annexed herewith.

**Annexure 1****Specimen Chart for Witnesses Examined:**

| <b><u>Prosecution<br/>Witness No.</u></b> | <b><u>Name of Witnesses</u></b> | <b><u>Description</u></b>                                                                                                                       |
|-------------------------------------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| PW-1                                      | Rattan Deep                     | Complainant/victim.                                                                                                                             |
| PW-2                                      | Harish Kumar                    | Eye witness.                                                                                                                                    |
| PW-3                                      | HC Nizamuddin                   | Joined investigation with IO.                                                                                                                   |
| PW-4                                      | SI Shishpal                     | Duty officer.                                                                                                                                   |
| PW-5                                      | Dr. Iqbal Singh                 | Professor & Head, Department of Surgery, GTB hospital, who identified the handwriting and signatures of Dr. Saqib Shahab on MLC of complainant. |

(Charu Aggarwal)  
ASJ-02/E-Court/Shahdara  
KKD/Delhi/25.04.2026

**Annexure-2****Specimen Chart for Exhibited Documents:**

| <b><u>Exhibit No.</u></b> | <b><u>Description of the Exhibit</u></b>              | <b><u>Proved by/Attested by</u></b> |
|---------------------------|-------------------------------------------------------|-------------------------------------|
| Ex. PW-1/A                | Statement of complainant.                             | PW1 Rattan Deep.                    |
| Ex. PW-4/A                | Computerized copy of FIR                              | PW4 SI Shishpal.                    |
| Ex. PW-4/B                | Endorsement on rukka.                                 | - do -                              |
| Ex. PW-4/C                | Certificate under Section 65B of Indian Evidence Act. | - do -                              |
| Ex. PW5/A                 | Opinion regarding injury on MLC of complainant.       | PW5 Dr. Iqbal Singh                 |
| Mark A                    | Site plan                                             | PW1 Rattan Deep                     |
| Mark X                    | Statement of eye witness Harish Kumar                 | PW2 Harish Kumar.                   |

(Charu Aggarwal)  
ASJ-02/E-Court/Shahdara  
KKD/Delhi/25.04.2026

**Annexure 3****Specimen Chart for Material Objects/Muddamals:**

| <b><u>Material Object No.</u></b> | <b><u>Description of the<br/>Exhibit</u></b> | <b><u>Proved by/Attested by</u></b> |
|-----------------------------------|----------------------------------------------|-------------------------------------|
| Nil                               | Nil                                          | Nil                                 |

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ASJ-02/E-Court/Shahdara  
KKD/Delhi/25.04.2026