

CNR No. DLSH01-004241-2024
SC No. 269/2024
FIR No. 53/2024
State v. Gaurav
PS: Madhu Vihar
Under Sections: 308/506/34 IPC

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(SANJAY GARG-II)
Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi

**IN THE COURT OF SH. SANJAY GARG-II,
PRINCIPAL DISTRICT & SESSIONS JUDGE, SHAHDARA,
KARKARDOOMA COURTS, DELHI**

**Sessions Case No. 269/2024
CNR No. DLSH01-004241-2024**

State	Vs.	Gaurav, S/o Sh. Bijender Singh, R/o Jhuggi No. 34, Majboor Nagar, J. J. Camp, Madhu Vihar, Delhi.
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FIR No.	:	53/2024
Police Station	:	Madhu Vihar
Under Sections	:	308/506/34 IPC

Chargesheet presented on : 15.04.2024

Judgment reserved on : 29.05.2026

Judgment pronounced on : 17.07.2026

J U D G M E N T

1. Accused Gaurav is facing trial for the commission of offences punishable under Sections 308/506/34 IPC.

CASE OF THE PROSECUTION:

2. The case of the prosecution is that upon receipt of DD No. 74A dated 15.02.2024 regarding quarrel, ASI Vijay Kumar along with Constable Mordhawaj reached the spot i.e. in front of Vijay

Collection, West Vinod Nagar, Delhi, where they came to know that the injured had been taken to LBS Hospital by his family members. Since no eye witness was available at the spot, they both went to the hospital and obtained the MLC of the injured Sh. Anil Kumar, who was under treatment. The injured told ASI Vijay Kumar that he would visit the police station for giving his statement after obtaining the medical treatment. On 16.02.2024, the injured visited the police station and his statement was recorded by ASI Vijay Kumar.

3. In his statement, the complainant/injured stated that he used to sell vegetables on rehri in front of Vijay Collection, Shri Ram Chowk, West Vinod Nagar, Delhi. On 15.02.2024 at about 9:30 p.m., when the complainant was selling vegetables on his rehri, accused Gaurav along with his four associates came and asked the complainant to remove his rehri. Upon the refusal of the complainant, accused Gaurav exhorted his associates to give beatings to the complainant. While his associates were beating the complainant, accused Gaurav repeatedly struck the complainant on the head with a light stand, causing injuries. The blood started oozing from the injuries and the complainant fell on the ground. Accused Gaurav along with his associates fled from the spot by extending threat to teach him a lesson. Somebody gave information about the incident to the police. The sister in law of the complainant namely Smt. Sushila, who was present at the spot at the time of the incident, took the complainant to LBS Hospital.

After providing first aid, the complainant was referred to GTB Hospital for further treatment. Alleging that the accused Gaurav and his associates had assaulted him, the complainant sought action against them.

4. On the basis of the above statement of the complainant, FIR under Sections 308/506/34 IPC was registered and the investigation of the case was assigned to IO ASI Vijay Kumar. IO prepared the site plan of the spot at the instance of the complainant. On 16.02.2024, IO arrested the accused Gaurav on the identification of the complainant from Chander Vihar Railway Line. In his disclosure statement, accused Gaurav divulged the names of his associates as Gopi, Sameer, Luckka and Lakhiya. He got recovered the weapon of offence i.e. light stand from the bushes near the place of his apprehension. Accused Gaurav was arrested and produced before the Court, which sent him to judicial custody. Despite efforts, the whereabouts of the remaining accused persons could not be traced. IO obtained the final opinion on the MLC of the complainant. The nature of injury was opined as simple. After the completion of investigation, the chargesheet qua accused Gaurav was filed before the Ld. MM on 15.04.2024.
5. Cognizance of the offences punishable under Sections 308/506/34 IPC was taken on 29.05.2024. After the compliance of the provisions of Section 207 CrPC, the chargesheet was committed to the Sessions Court on 06.06.2024.

CHARGE:

6. On 26.07.2024, the charge for the commission of offences punishable under Sections 308/506/34 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE:

7. In support of its case, the prosecution examined 9 witnesses.
- 7.1. PW1 HC Priyanka is the Duty Officer. She proved the FIR as Ex. PW1/A; the endorsement made by her on the rukka as Ex. PW1/B and the certificate under Section 65B of the Indian Evidence Act as Ex. PW1/C.
- 7.2. PW2 Sh. Anil Kumar is the complainant/injured. He proved the statement made by him to the police on 16.02.2024 as Ex. PW2/A; the site plan of the spot as Ex. PW2/B; the seizure memo vide which the clothes worn by him at the time of incident were seized as Ex. PW2/C and the seizure memo whereby the light stand got recovered by the accused was seized as Ex. PW2/D.
- 7.3. PW3 Smt. Sushila is the sister-in-law of the complainant/injured and an eye witness of the incident.
- 7.4. PW4 Smt. Geeta Gupta, who used to sell vegetables near Shri Ram Chowk, West Vinod Nagar, Delhi, is also an eye witness of

the incident.

- 7.5. PW5 Constable Mordhwaj remained associated with IO ASI Vijay Kumar in the investigation. He proved the arrest memo, personal search memo and disclosure statement of the accused Gaurav as Ex. PW5/A to Ex. PW5/C.
- 7.6. PW6 Dr. Nikita, SMO, LBS Hospital was examined to prove the MLC of the complainant/injured. She appeared on behalf of Dr. Keerthi, who had examined the injured Sh. Anil Kumar on 15.02.2024 and prepared the MLC. She identified the signature of Dr. Keerthi on the MLC and proved the same as Ex. PW6/A.
- 7.7. PW7 SI Prem Chand had accompanied IO ASI Vijay Kumar to Karkardooma Courts on 29.02.2024. He proved the application seeking police custody remand of the accused Gaurav as Ex. PW7/A.
- 7.8. PW8 HC Ravi is the MHC(M), PS Madhu Vihar. He proved the entry No. 2345 dated 17.02.2024 regarding deposit of case property by IO ASI Vijay Kumar as Ex. PW8/A.
- 7.9. PW9 ASI Vijay Kumar is the IO of the case. Along with other documents already proved by other witnesses, he proved the rukka as Ex. PW9/A.

STATEMENT OF THE ACCUSED:

8. The statement of the accused under Section 313 CrPC was recorded on 29.05.2026. All the incriminating material available on record was put to him to which his stand was of general denial. He took the defence that he was not present at the spot at the time of the alleged incident and had been falsely implicated in this case by the police in connivance with the complainant.
9. I have heard the Ld. Addl. PP for the State as well as the Ld. Counsel for the accused. Material on record has also been perused.

ARGUMENTS ADVANCED:

10. Ld. Addl. PP for the State has submitted that the complainant Sh. Anil Kumar (PW2) and his sister-in-law Smt. Sushila (PW3) are the prime witnesses of the case of the prosecution and they have deposed in unison regarding the infliction of injury on the head of the complainant with a light stand by the accused Gaurav on the date of incident. He has submitted that the prosecution has also examined an independent witness Smt. Geeta Gupta (PW4), who has also supported the version of PW2 and PW3. He has submitted that the MLC of the complainant produced on record also substantiates the case of the prosecution. He has argued that from the unshattered testimony of the prosecution witnesses and the medical evidence on record, the prosecution has succeeded in proving its case beyond reasonable doubt against the accused

Gaurav and thus, he is liable to be convicted for the charges against him.

11. Per contra, Ld. Counsel for the accused has submitted that the accused has been falsely implicated in the case and he was not even present at the spot at the time of the alleged incident. He has submitted that no reliance can be placed on the testimonies of the complainant and his sister-in-law as they suffer from improvements and inconsistencies. He has submitted that it is apparent on the face of the record that Smt. Geeta Gupta (PW4) is a planted witness as she was not cited as witness by the prosecution in the chargesheet and has been examined in place of one Seema, who was shown as witness in the list of witnesses. He has submitted that the recovery of the weapon of offence was not effected at the instance of the accused as alleged by the prosecution. He has argued that though the alleged weapon of offence i.e. the light stand and the blood stained clothes of the complainant (PW2) have been produced during trial but in the absence of any forensic report, the prosecution has failed to connect the said articles with the alleged offence. He has argued that even otherwise, the injuries sustained by the complainant have been opined to be simple in nature and therefore, the offence under Section 308 IPC is not made out. He has urged that since the prosecution has miserably failed to prove its case, the accused deserves to be acquitted.

ANALYSIS AND REASONING:

12. Section 308 IPC, which prescribes punishment for attempt to commit culpable homicide, reads as under:

“308. Attempt to commit culpable homicide.— 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.”

13. In order to succeed in its case qua the offence under Section 308/34 IPC against the accused, the prosecution is required to prove:

- (i) That the accused had caused injuries to the complainant on the date of incident;
- (ii) That the said injuries had been caused with such intention or knowledge and under such circumstances that if the complainant had died, the accused would have been guilty of culpable homicide not amounting to murder; and
- (iii) That the above act had been committed by the accused in furtherance of common intention with his associates.

14. The case of the prosecution primarily hinges upon the testimonies of the complainant/injured Sh. Anil Kumar (PW2) and his sister-in-law Smt. Sushila (PW3). In his testimony, PW2 Sh. Anil Kumar deposed that on the date of incident, he was present on his vegetable cart (rehri) in front of Vijay Collection, West Vinod Nagar, Delhi and at about 9 p.m., 10-12 persons came and gave beatings to him as a result of which, he became unconscious. He deposed that the accused Gaurav was one of the said offenders and had hit him with a light stand on the head. He further deposed that as he had sustained injuries, his sister-in-law Smt. Sushila Devi took him to LBS Hospital, from where he was referred to GTB Hospital. Since PW2 remained silent on certain aspects, he was cross-examined by the Ld. Addl. PP for the State. During the said cross-examination, PW2 admitted that the incident in question took place on 15.02.2024; that the accused Gaurav and his four associates had asked him to remove his cart and upon his refusal to do so, accused Gaurav had exhorted his associates to give beatings to him; and that while fleeing from the spot, accused Gaurav had threatened to teach him a lesson.
15. Smt. Sushila, who is the sister-in-law of the complainant/injured and eye witness of the incident in question, has been examined as PW3. She has corroborated the version of the complainant with regard to the infliction of injury on his head with an iron stand by the accused Gaurav. Since PW3 also remained silent on certain aspects, she was cross-examined by the Ld. Addl. PP for the State,

wherein she admitted that the incident had taken place on 15.02.2024 and that upon the refusal of the complainant to remove his cart, accused Gaurav and his four associates had given beatings to the complainant.

16. The complainant (PW2) as well as his sister-in-law (PW3) were cross-examined on behalf of the accused but nothing could be elicited to dent their testimony regarding the infliction of injury on the head of the complainant with a light stand by the accused on the date of incident. Both the witnesses have also identified the accused during the course of their testimony.
17. Ld. Counsel for the accused has contended that both the complainant and his sister-in-law had omitted to disclose material particulars of the prosecution case in the first instance during their examination-in-chief and the said facts came on record only when they were cross-examined by Ld. Addl. PP for the State. He has argued that the improvements made during such cross-examination render their testimony unreliable.
18. The aforesaid contention does not merit acceptance. It is pertinent to observe that the complainant is a vegetable vendor and his sister-in-law is working as a maid. Considering their modest socio-economic and educational background, they can not be expected to be conversant with the court proceedings or the manner of making deposition in the Court. In such circumstances, some hesitation or

omission while deposing in examination-in-chief can not be regarded as unnatural. In fact, the omissions such as the exact date of incident and the cause of occurrence pertain only to the peripheral aspects of the prosecution case. These omissions do not affect the substratum of the prosecution version. The material core of their testimony regarding the infliction of injury by the accused Gaurav on the head of the complainant with a light stand has throughout remained consistent. It is well settled that the testimony of a witness is not liable to be discarded merely because the witness was cross-examined by the Ld. Prosecutor or omitted to state certain facts in the first instance. The evidence must be appreciated as a whole and if the same inspires confidence, it can safely be relied upon by the Court.

19. In the case on hand, apart from the complainant and his sister-in-law, the prosecution has also examined an independent witness Smt. Geeta Gupta as PW4. She is also an eye witness of the incident and has deposed that she is also working as a vegetable vendor near Shri Ram Chowk, West Vinod Nagar, Delhi. In her testimony, she has stated that on 15.02.2024, she was present at her cart (rehri) and had seen the accused Gaurav and his 2-4 associates inflicting injury with a light stand on the head of the complainant. She further deposed that she had made a call to the police on number 112 and had handed over a video of the incident recorded using her mobile phone. She also identified the accused in the Court.

20. Ld. Defence Counsel has contended that while one Seema, W/o Sh. Abhishek was shown as a prosecution witness in the list of witnesses accompanying the chargesheet, the prosecution has examined Smt. Geeta Gupta, W/o Sh. Raju Gupta as PW4 before the Court. He has argued that the unexplained substitution renders Smt. Geeta Gupta a planted witness and makes her presence at the place of occurrence doubtful. He has further argued that although Smt. Geeta Gupta deposed that she had recorded the occurrence on her mobile phone and handed over the video to the IO but the IO has denied having received any such video. He has contended that the above discrepancies materially impair the credibility of the witness.
21. The contentions of the Ld. Defence Counsel are devoid of merit. The IO has satisfactorily explained that owing to an inadvertent clerical error, the name of Smt. Geeta Gupta came to be mentioned as Seema in the list of witnesses whereas Smt. Geeta Gupta was, in fact, the person whose statement under Section 161 CrPC had been recorded during the course of investigation. He has also identified Smt. Geeta Gupta as the said witness before the Court. In the absence of any material to suggest that the explanation is false or contrived, the discrepancy in the name of the witness is insufficient to discredit her testimony or to infer that she is a planted witness. Equally untenable is the contention regarding the non-production of the video recording. Even assuming that PW4 Smt. Geeta Gupta had recorded the occurrence and handed over

the video to the IO, its non-production is not fatal to the prosecution case. Such a video would have constituted only corroborative evidence. The prosecution case is founded upon direct ocular evidence, including the testimony of the complainant/injured, which constitutes substantive evidence in law. It is trite that where trustworthy direct evidence is available, mere non-production of corroborative material, by itself, does not undermine the prosecution case. Accordingly, the contentions raised on behalf of the accused stand rejected.

22. To corroborate the direct ocular evidence of the complainant/injured and the eye witnesses, the prosecution has also produced on record the medical evidence in the form of MLC of the complainant/injured dated 15.02.2024. PW6 Dr. Nikita, SMO, LBS Hospital has proved the said MLC as Ex. PW6/A. In the MLC, it is mentioned that the injured had been brought to the hospital by his sister-in-law Smt. Sushila with the alleged history of assault. As per the MLC, the complainant had sustained laceration of 3 x 1.5 cm over left temporal region and abrasions over the other parts of the body. The injuries sustained by the complainant also lend credence to the version of the prosecution witnesses.
23. In his statement under Section 313 CrPC, the accused has raised the defence that he was not present at the spot at the time of occurrence. The onus of proving the said plea of alibi was upon

the accused. He has neither disclosed where he was at the time of incident nor adduced any evidence to establish his presence elsewhere. Thus, the said plea raised by the accused deserves to be rejected.

24. In view of the unshattered testimony of PW2, PW3 and PW4 coupled with the medical evidence available on record, it stands established that the complainant had sustained injuries on the date of incident at the hands of the accused Gaurav and his associates.
25. Now the question which arises for consideration is whether the infliction of injuries on the person of the complainant attracts the offence under Section 308 IPC against the accused Gaurav.
26. Ld. Addl. PP for the State has argued that the intention or knowledge on the part of the accused Gaurav that the injuries caused by him were likely to cause the death of the complainant can be gathered from the fact that he had inflicted repeated blows with an iron stand on the head of the complainant, which is a vital part of the body and thus, the commission of offence under Section 308 IPC stands proved against him. Per contra, the Ld. Counsel for the accused has contended that the injuries sustained by the complainant have been opined to be simple in nature and therefore, only the offence under Section 323 IPC is made out against the accused Gaurav.

27. In order to constitute an offence under Section 308 IPC, it must be proved that the accused had caused the injury with the intention or knowledge that by inflicting such injury, he was likely to cause death. The intention or knowledge on the part of the accused is to be deduced from the circumstances in which the injury had been caused, the weapon used to inflict injury, the nature of injury and the body part where such injury was suffered. As per the MLC (Ex. PW6/A), the complainant was found to be conscious and oriented at the time of his medical examination. According to the prosecution, when the associates of accused Gaurav were beating the complainant, accused Gaurav had repeatedly given blows on his head with an iron stand. However, the MLC of the complainant records only a single injury on the head, namely, a lacerated wound measuring 3 x 1.5 cm over the left temporal region. Except for the said lacerated wound, no other injury was noticed on the head. Significantly, there was neither any contusion nor any swelling, which rules out the repeated infliction of blows on the head of the complainant. The remaining injuries are in the form of abrasions on the wrists and left hand of the complainant. All the injuries sustained by the complainant have been opined to be simple in nature. While the mere fact that the injuries are simple is not by itself conclusive of the nature of the offence, it is nevertheless a relevant circumstance in assessing the intention or knowledge attributable to the accused. In **Ramesh v. State, 2010 SCC OnLine Del 256**, the Hon'ble Delhi High Court has held that

merely because an injury is inflicted on the head, it can not be said that such an injury was caused with the intention to commit culpable homicide not amounting to murder. From the material on record, it is evident that the altercation between the parties escalated upon the refusal of the complainant to remove his vegetable cart and the accused Gaurav picked the light stand and gave blow on the head of the complainant in the heat of moment. Having regard to the nature and extent of the injuries sustained by the complainant and the overall facts and circumstances of the case, this Court is of the considered view that the requisite intention or knowledge on the part of the accused Gaurav to commit offence under Section 308 IPC is not made out. Consequently, the injuries caused to the complainant by the accused Gaurav fall within the ambit of Section 323/34 IPC.

28. As far as the charge for the offence under Section 506 IPC is concerned, it would be beneficial to refer to Section 503 IPC, which defines criminal intimidation. Section 503 IPC reads thus:

“503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

29. A bare reading of the above provision makes it clear that for an offence of criminal intimidation, it must be shown that the accused

had threatened the victim with an intention to cause alarm or to compel him to do or abstain from doing any act. Mere threats given by the accused without the requisite mens rea would not constitute the offence of criminal intimidation.

30. In *Sharif Ahmed & Anr. v. State of U.P. & Anr.*, (2024) 14 SCC 122, the Hon'ble Supreme Court has held as under:

“38. An offence of criminal intimidation arises when the accused intends to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word ‘intimidate’ means to make timid or fearful, especially: to compel or deter by or as if by threats. The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word ‘threat’ refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.”

31. The above legal position has been reiterated by the Hon'ble Apex Court in *Naresh Aneja v. State of U.P. & Anr.*, (2025) 2 SCC 604 and it has been held that an offence of criminal intimidation arises when the accused intends to cause alarm to the victim, though it does not matter whether the victim is alarmed or not.
32. In the case on hand, the complainant (PW2) has deposed that while fleeing from the spot, accused Gaurav had extended threat to teach him a lesson. The issue whether the accused had the intention to cause alarm to the complainant has to be gathered from the surrounding circumstances i.e. the words uttered and the

act which followed such utterance. The very fact that the accused fled away after making the utterance goes to show that the intention to cause alarm to the complainant or to compel him to do or abstain from doing an act was lacking. In the absence of the said intention, which is the soul of the definition of criminal intimidation, the offence under Section 506 IPC is not proved against the accused.

CONCLUSION:

33. In view of the foregoing discussion, the accused Gaurav is hereby convicted for the offence punishable under Section 323/34 IPC and acquitted of the charge under Section 506 IPC.
34. Copy of the judgment be supplied to the convict free of cost.
35. The convict shall now be heard on the point of sentence.

Pronounced in the open court
on 17.07.2026

(SANJAY GARG-II)
Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi

Appendix-I**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. PROSECUTION WITNESSES:**

Witness No.	Name of witness	Description / Role of the witness
PW1	HC Priyanka	Duty Officer
PW2	Sh. Anil Kumar	Complainant/Injured
PW3	Smt. Sushila	Eye Witness
PW4	Smt. Geeta Gupta	Eye witness
PW5	Constable Mordhwaj	Police witness
PW6	Dr. Nikita	Senior Medical Officer, LBS Hospital
PW7	SI Prem Chand	Police witness
PW8	HC Ravi	MHC (M)
PW9	Retd. ASI Vijay Kumar	Investigating Officer

B. DEFENCE WITNESSES, IF ANY:

NIL

C. COURT WITNESSES, IF ANY:

NIL

(SANJAY GARG-II)Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi

Appendix-IILIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. PROSECUTION:**

Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex. PW1/A	Computerized copy of the FIR	PW1
Ex. PW1/B	Endorsement on the rukka	
Ex. PW1/C	Certificate under Section 65 B of Indian Evidence Act	
Ex. PW2/A	Initial statement dated 16.02.2024 of the complainant Sh. Anil Kumar	PW2
Ex. PW2/B	Site plan of the place of incident	PW2 & PW9
Ex. PW2/C	Seizure memo of the clothes worn by the complainant at the time of the incident	PW2, PW5 & PW9
Ex. PW2/D	Seizure memo of the weapon of offence i.e. light stand	
Ex. PW4/A	Statement under Section 161 CrPC of Smt. Geeta Gupta	PW4
Ex. PW5/A	Arrest memo of accused Gaurav	PW5 & PW9
Ex. PW5/B	Personal search memo of accused Gaurav	
Ex. PW5/C	Disclosure statement of accused Gaurav	

Ex. PW6/A	MLC No. 1419 of the complainant Sh. Anil Kumar	PW6
Ex. PW7/A	Application seeking two days PC remand of accused Gaurav	PW7
Ex. PW8/A	Copy of Register No. 19 containing entry of deposit of case property	PW8
Ex. PW9/A	Rukka	PW9

B. DEFENCE:

NIL

C. COURT EXHIBITS:

Exhibit No.	Description of the Exhibit	Proved by / Attested by
Ex. C1	DD No. 74A dated 15.02.2024	Admitted under Section 294 CrPC by the accused.

(SANJAY GARG-II)

Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi

Appendix-III**LIST OF ARTICLES / OBJECTS:**

Material Object Number	Description of the Object / Exhibit	Proved by / Attested by
Ex. P1	Weapon of offence i.e. light stand	PW2, PW4, PW5 & PW9
Ex. P2	Seized clothes of the complainant / injured Sh. Anil Kumar	PW2, PW5 & PW9

(SANJAY GARG-II)

Principal District & Sessions Judge,
Shahdara, Karkardooma Courts, Delhi