

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

SC No. 391/2022
FIR No. 67/2015
P.S. Vivek Vihar
u/s 308 IPC

State **Versus** **Ajay kumar
s/o Sh. Hukum Singh
r/o Village Pota Kabulpur,
Bulandshahar, UP.**

Plea of accused: **Pleaded not guilty.**
Final order: **Conviction.**

Date of Committal to Sessions Court : 10.10.2022
Date on which Judgment reserved : 16.03.2026
Date of pronouncement of judgment : 30.03.2026

J U D G M E N T

1. Accused has faced trial for the offences under Section 308 Indian Penal Code on the allegations that on 25.01.2015 at about 4.00 am, he caused injuries to complainant/victim Sunder Singh by hitting him with wooden *danda*.

2. CASE OF THE PROSECUTION:

2.1 The prosecution's case is that at the time of the incident, the complainant/victim Sunder Singh, the accused Ajay, and witness Kunwar Sain were employed at *Laxmi Metal Factory*, Vishwas Nagar, Delhi, and resided in the company-provided accommodation at *18 Quarters*.

On the intervening night of 24/25 January 2015, the accused, under the influence of alcohol, was not performing

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his duties at the factory. This led to an altercation between him and the complainant Sunder Singh. Following the quarrel, the accused left the factory premises and went to his room at 18 Quarters. At about 5:00 a.m., after completing their work, the complainant and witness Kunwar Sain were returning to their rooms. On the way, they encountered the accused, who was standing with a wooden *danda* in his hand. As the complainant attempted to pass, the accused suddenly struck him on the head with the *danda*, declaring, “*Aaj tera kaam khatam kar deta hu*” (“Today I will finish you”). Blood began to flow from the complainant’s head, and he immediately sat down. The accused then struck him on the head a second time.

In the process of rescuing the complainant, witness Kunwar Sain also sustained an injury to his shoulder from the *danda*. Thereafter, the accused fled the scene. Kunwar Sain promptly made a PCR call. The police arrived at the spot and transported the complainant to Hedgewar Hospital. The PCR officials also relayed the information to the local police station at Vivek Vihar.

2.2 On receipt of DD No. 8A regarding quarrel, IO/SI Santosh Pabri along with Ct. Vijay reached at 18 Quarters, where they came to know that injured had been shifted to Hedgewar hospital and they accordingly reached at the hospital. IO collected the MLC of complainant/victim, on which alleged history was of assault. IO recorded the statement of complainant/victim. On 13.05.2019, doctor Ajay Madan opined the nature of injury as ‘*simple*’. Initially,

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accused could not be arrested as he was not traceable. In the meantime, investigation was transferred to SI Suresh Chand. It was further transferred to PSI Vivek Lamba, who on 12.03.2019 arrested the accused and completed the formalities of his arrest.

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 308 IPC is Sessions Triable.

4. **CHARGE FRAMED AGAINST ACCUSED**

Upon committal, after hearing both the sides on the point of charge, vide order dated 10.10.2022, charge under Section 308 IPC was framed against accused, to which he pleaded not guilty and claimed trial.

5. **PROSECUTION WITNESSES:**

In order to prove its case, prosecution has examined as many as 07 witnesses.

5.1 **PW-1 is W/ASI Usha** who on the date of incident i.e. 25.01.2015 was working as duty officer at P.S. Vivek Vihar from 8.00 am to 4.00 pm when she received a rukka sent by IO/SI Santosh Pabri through Ct. Vijay Veer for registration of FIR, on the basis of which, FIR of this case was registered on computer by this PW and made an endorsement on the rukka. The FIR is Ex. PW2/A, endorsement on rukka Ex. PW2/B and certificate u/s 65B of Indian Evidence Act is Ex. PW2/C. She has also brought the

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original Roznamcha Register in which DD No. 12A is mentioned. The said DD is Ex. PW2/D.

5.2 **PW2 is Sunder Singh**, complainant/victim, who has stated that in the year 2015, he along with Kunwar Singh and accused was working in '*Laxmi Metal Factory*' which was into the business of casting of steel sheets. He could not disclose the date, month and time of incident but regarding the incident he stated that in the year 2015, during winter season, either in the month of December or January at about 4.00 am, accused was under the influence of liquor, on which this PW asked him as to why he has drunk during working hours, on which altercation took place between them and accused left the factory premises. On that day at about 4.30 am, after finishing the factory work, this PW along with their other associate Kunwar Sain were going to their quarters at Vishwas Nagar, while accused was standing on the way and he hit *danda* on the head of this PW, Kunwar Sain tried to rescue this PW but accused again hit *danda* on his head due to which this PW sustained injuries and even Kunwar Sain also received *danda* blow. Accused ran away from there. Kunwar Sain made a PCR call. PCR van shifted the complainant to hospital, where he was given treatment. Police recorded his statement Ex. PW2/A. At the instance of this PW site plan Ex. PW2/B was prepared. This PW was cross examined by Ld. Addl. PP on the date of incident, to which he stated that the date of incident was 25.01.2015.

5.3 **PW3 is Kunwar Sain**, who has not supported the case of the prosecution. He has stated that he does not

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remember the date, time and month of the incident but during the period of incident, he was working in a *tamba/peetal* factory situated at Karkardooma. At that time, total 9 employees, including accused and complainant/victim Sunder were working in the said factory. He stated that on the day of incident, he along with his other co-employees was present at the spot when someone thrown stones towards them and one of the stone hit on the head of Sunder, due to which he sustained injuries on his head and blood started oozing. This PW wrapped the cloth on his head. Police reached at the spot. This PW shifted injured to govt. hospital in an auto. He has stated that his statement was recorded by the police. He also stated that he does not know who pelted stones. He has not identified the accused in the court. He was cross examined by Ld. Addl. PP. but he denied all the leading questions put to him by Ld. Addl. PP.

5.4 **PW4 is Dr. Shirish Vishwakarma**, who on 24.01.2015 was posted as CMO at Dr. Hedgewar hospital and examined the complainant/injured. He has stated that on 25.01.2015, injured was brought into emergency department of the hospital by ASI Ram Diya. On his examination, the following injuries were found :-

1. *CLW measuring 4cm x 0.5 cm over forehead.*
2. *CLW measuring 2 cm x 0.5 cm over posterior parietal region of scalp.*

After primary treatment, complainant was referred to Surgery department for further evaluation. This PW prepared the MLC Ex. PW4/A of the injured.

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5.5. **PW5 is SI Vijay Veer Singh**, who has stated that on 25.01.2015, he was posted as Constable at P.S. Vivek Vihar. On that day, he along with IO/SI Santosh Pabri was on Emergency Duty from 8.00 pm to 8.00 am. On that day DD No. 8 A was marked to IO/SI Santosh Pabri for investigation. This PW along with IO reached at 18 Quarters, Kasturba Nagar, Delhi, where they came to know that injured has already been shifted to Hedgewar hospital. They reached at Hedgewar hospital where they met injured and IO recorded his statement, on the basis of which, rukka was prepared and handed over to this PW for registration of FIR. Accordingly, this PW got registered the FIR from concerned duty officer. After registration of FIR, this PW reached at the hospital, where IO met him, victim was discharged from the hospital on the same day, at whose instance, site plan was prepared.

5.6 **PW6 is first IO namely SI Santosh Pabri** who has stated that on 25.01.2015, he was posted as SI at P.S. Vivek Vihar. On that day, he was on Emergency Duty from 8.00 pm to 8.00 am. On that day at about 6.10 am, he received DD No. 8 A from duty officer, after reading of which, this PW came to know about the quarrel at 18 quarters chauraha, Vishwas Nagar near Dharam Kaanta. On receipt of said DD, he along with PW-5 Ct. Vijay Veer reached at 18 Quarters, Kasturba Nagar, Delhi, where they came to know that injured has already been shifted to Hedgewar hospital, accordingly, they reached at Hedgewar hospital, where this PW collected the MLC of injured and

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met him and recorded his statement, on the basis of which, rukka was prepared by this PW and handed over to PW5 for registration of FIR. Accordingly, PW5 got registered the FIR from concerned duty officer. After registration of FIR, the same was handed over to this PW. Victim was discharged from the hospital on the same day, at whose instance, site plan was prepared. Initially, accused was not traceable, therefore, he could not be arrested. This PW recorded the statement of witnesses. He also deposited the MLC of injured in the hospital for final opinion. During pending investigation, this PW was transferred from the P.S. therefore, he deposited the case file in the office of MHC (R).

5.7 **PW7 is SI Vivek Lamba**, the subsequent IO of the case, who arrested the accused and after completion of investigation, prepared the chargesheet and filed the same before the concerned court.

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

On 20.08.2025 the accused has admitted the final medical opinion on the nature of injuries sustained by the victim/complainant Sunder Singh on MLC No. 256/2015 dated 25.01.2015 as simple opined by Dr. Ajay Madan.

6. STATEMENT OF ACCUSED.

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

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7. ARGUMENTS

7.1 Ld. Additional PP has argued that from the evidence and other material which has come on record, the prosecution has been able to successfully prove its case. The complainant/victim has supported the prosecution story to the hilt supported by medical evidence proving that victim sustained injuries on vital part of the body i.e. head. It is also argued that the series of events that initially there was altercation between victim and accused in factory, thereafter, conduct of accused that he, having *danda* in his hand, was waiting for the victim outside the factory to attack upon him clearly proves his intention and knowledge to commit crime, thus, it is prayed that accused be convicted for the commission of the alleged offence.

7.2 On the other hand, Ld counsel for accused has argued that the accused has been falsely implicated in the present case and he is innocent. The complainant/injured/victim and the other material witnesses have not supported the case of the prosecution. No independent person from the public associated in the investigation and arrest of the accused. There is no evidence on record to connect the accused with the alleged offences. The arrest of accused after considerable gap from the date of incident and non-recovery of alleged weapon also creates doubt on the prosecution case. Thus, it is prayed that as the prosecution has failed to prove its case, accused may be acquitted.

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8. DECISION AND ANALYSIS

8.1 Accused is charged for the offence u/s 308 which deals with an act done with such intention or knowledge and under such circumstances that, if death had been caused by that act, the offence would have amounted to culpable homicide not amounting to murder. For attracting the said provision, it is not necessary that death should actually occur; what is required is the existence of intention or knowledge attributable to the accused at the time of commission of the act, coupled with the dangerous nature of the act and the surrounding circumstances.

8.2 The case is primarily based on the evidence of complainant/victim Sunder (PW-2) who has stated that in the year 2015, he along with his associate Kunwar Singh (PW-3) and accused was working in '*Laxmi Metal Factory*' which was into the business of casting of steel sheets; in the year 2015, during winter season, either in the month of December or January at about 4.00 am, accused was under the influence of liquor, on which this PW asked him as to why he has drunk during working hours, on which altercation took place between him and accused, thereafter, the later left the factory premises. On that day at about 4.30 am, after finishing the factory work, victim along with his other associate Kunwar Sain were going to their quarters at Vishwas Nagar, while accused was standing on the way and he twice hit *danda* on his head; Kunwar Sain tried to save him but in the process, he also received *danda* blow.

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Accused ran away from the spot. PW-2 victim is a natural, competent and primary witness to the incident. Nothing is found in the cross-examination of PW-2 to doubt his testimony. It is settled law that the testimony of a victim of an offence occupies a special status in law and is entitled to great weight. The deposition of the victim is clear, cogent and consistent on the material aspect that the accused hit wooden *Danda* on his head.

8.3 As per PW-2 victim, at the time of incident his associate PW-3 Kunwar Sain was also accompanying him but Pw-3 has not supported the prosecution case and stated that on the date and time of incident victim sustained injuries as someone had pelted stones on him outside the factory. He did not identify the accused in court. Significantly, non-identification of accused by this PW is completely inconsequential since as per his own version accused was known to him prior to the incident as they both were working in the same factory. Be that as it may, PW-3 has not supported the prosecution case on the occurrence. It is pertinent to note here that the case of the prosecution cannot be brushed aside merely because PW-3 Kunwar Sain did not support the version of the prosecution, the evidence of the complainant cannot be discarded on that ground alone. The complainant is an injured witness, and the law accords a higher degree of credibility to the testimony of an injured witness, as his presence at the spot is natural and his injuries provide an in-built guarantee of truthfulness. His evidence is

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clear, cogent and consistent on the core aspect of the incident that he was hit twice by the accused with *danda*.

9. It is equally well settled that the prosecution is not required to prove its case by a plurality of witnesses. Evidence has to be weighed and not counted. Even if a witness turns hostile or does not fully support the prosecution case, the testimony of another reliable witness does not become unreliable by default. The Court is required to separate the grain from the chaff and assess whether the evidence of the injured witness inspires confidence and is corroborated by surrounding circumstances and medical evidence.

10. In the present case, the testimony of the complainant stands amply corroborated by unimpeachable medical evidence, which conclusively establishes the nature, seat and severity of the injuries. Therefore, the absence of corroboration from Kunwar Sain's testimony does not create any dent in the prosecution case, nor does it render the complainant's testimony unreliable. The evidence of the victim does not suffer from any infirmity merely because PW Kunwar Sain did not support the prosecution version, and the same can safely be relied upon to record a finding of guilt against the accused.

11. The version of victim (PW-2) finds strong corroboration from the medical evidence on record, as per MLC, the victim sustained the following injuries:

1. CLW measuring 4cm x 0.5 cm over forehead.

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2. CLW measuring 2 cm x 0.5 cm over posterior parietal region of scalp.

The above injuries were opined to be simple in nature. The medical evidence proves that the injuries were possible to be caused by the danda. Thus, the ocular testimony of victim (PW-2) is fully corroborated by unimpeachable medical evidence, leaving no manner of doubt that the victim suffered simple injuries in the incident.

12. Ld. Defence counsel argued that the weapon used during the incident was neither recovered from the spot nor from the possession of accused and also that accused was belatedly arrested, hence, the prosecution case is doubtful. However, this argument has no substance. It is also a well settled law that non-recovery of weapon cannot be considered fatal to the case of the prosecution. In **Nankaunoo Vs. State of Uttar Pradesh (2016) 3 SCC 317**, Hon'ble Supreme Court held that where in light of unimpeachable oral evidence is corroborated by the medical evidence, non-recovery of weapon does not materially affect the case of the prosecution. Any omission on the part of the investigating officer cannot go against the prosecution's case. Story of the prosecution is to be examined de hors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice. The late arrest of accused may at best amount to faulty investigation for which case of the prosecution cannot be discarded in toto.

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13. In the present case, it has been clearly established that the incident happened on the spur of the moments without any premeditation. Accused had lost control over himself when PW-3 objected him on consuming liquor in working hours and while PW-3 was on the way to his house, accused had attacked him with *danda* causing him two injuries on the head which as per, MLC are opined to be '*simple*'. Clearly, the injuries show that there was no intention of the accused to commit murder of the victim. All that had happened may have been because accused had lost control over himself. Merely because of his crushed ego, he had inflicted those injuries.
14. It is a settled law that in order to bring a case within the ambit of section 308 IPC, it is of utmost importance that as to on which part of the body, accused had chosen to hit. Apart from this, it is also of importance as to how many blows were given and the nature of weapon used by the accused.
15. From the medical evidence, it is clearly discerned that though the nature of injuries were opined by the Doctor as simple, yet, it is important to note that the injuries were on the head of the victim. Needless to say, that head is one of the vital and most important part of the body and any injury to it may have proved fatal for the injured. When accused has given the head injury, he must have desired knowledge that it may cause serious injury to the injured, which may likely to cause death.

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16. In view of the entire conspectus of facts and circumstances of the matter, the prosecution has been successfully able to prove its case beyond reasonable doubt against accused for the offence punishable under Section 308 of the Indian Penal Code. Accordingly, accused Ajay is hereby convicted for the offence punishable under Section 308 of the Indian Penal Code.

Copy of this judgment be given dasti to convict free of cost.

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**Announced in the open
Court on 30.03.2026**

**(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.

Specimen Chart for Witnesses Examined:

<u>Prosecution Witness No.</u>	<u>Name of Witnesses</u>	<u>Description</u>
PW-1	W/ASI Usha	Duty Officer.
PW-2	Sunder Singh	Complainant/victim.
PW-3	Kunwar Sain	Eye witness.
PW-4.	Dr. Shishir Vishwakarma	victim was examined by this PW at Dr. Hedgewar hospital.
PW-5.	Ct. Vijay Veer Singh	Joined investigation with IO.
PW-6.	Insp. Santosh Pabri	First Investigating Officer.
PW-7.	SI Vivek Lamba	2 nd Investigating Officer.

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Annexure-2

Specimen Chart for Exhibited Documents:

<u>Exhibit No.</u>	<u>Description of the Exhibit</u>	<u>Proved by/Attested by</u>
Ex. PW-2/A	Copy of FIR	PW1 W/ASI Usha
Ex. PW-2/B	Endorsement on rukka	-do-
Ex. PW-2/C	Certificate under Section 65-B Indian Evidence Act.	-do-
Ex. PW-2/D	Copy of DD No. 12A.	-do-
Ex. PW-2/A	Statement of complainant	PW2 Sunder Singh
Ex. PW-3/A	Statement of eye witness namely Kunwar Sain.	PW3 Kunwar Sain
Ex. PW-4/A	MLC of victim Sunder Singh	PW4 Dr. Shishir Vishwakarma.
Ex. PW6/A	Rukka	PW6 Insp. Santosh Pabri
Ex. PW7/A	Notice u/s 41A Cr. PC	PW7 SI Vivek Lamba
Ex. PW7/B	Interrogation Report of accused Ajay	-do-

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KKD/Delhi/30.03.2026

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Annexure 3

Specimen Chart for Material Objects/Muddamals:

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

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