

**IN THE COURT OF SH. VINEET KUMAR:ASJ-02: WEST
DISTRICT: TIS HAZARI COURTS, DELHI**



CNR No.	DLWT01-000694-2023
SC No.	49/2023
FIR No.	786/2022
P.S.	Ranhola
Under Sec.	308 IPC
State	Vs. Chetan Aggarwal@ Ganesh S/o Subhash Aggarwal R/o Gali No. 12, Jai Vihar, Baprola, New Delhi.
Date of Committal to Sessions Court	: 21.01.2023
Date of pronouncement of judgment	: 30.05.2026
Accused represented by	: Ld. Counsel Mr. Manjeet Singh Rathore.
State represented by	: Ld. Addl. PP Ms. Suchitra Singh Chauhan.
Final Order	: Convicted u/s 308 IPC

JUDGMENT

SUMMARY OF FACTS

1. The accused Chetan Aggarwal @ Ganesh S/o Subhash Aggarwal has been put to trial for the offence u/s 308 IPC on the charges that he had caused injuries on the body and head of the complainant Dharmender Kumar with a white colored wooden danda.

2. Briefly the case of prosecution is that on 28.10.2022, HC Satish Kumar No. 564/OD along with accompanying staff HC Ramesh No. 1984/OD reached the spot pursuant to receipt of information. Upon inquiry at the spot, it was revealed that the injured person had already left for medical treatment at a hospital. On contacting the caller telephonically, the caller informed that the injured had got first aid/bandaging done from a private doctor and was being brought to the police station.

Thereafter, the caller appeared at the police station along with the injured. HC Satish Kumar sent the injured to Deen Dayal Upadhyay Hospital for medical examination. At that stage, the injured stated that he was in severe pain and would give his detailed statement after returning to the police station.

On 29.10.2022, complainant Dharmender Kumar Sah S/o Late Sh. Ram Dayal, R/o H. No. C-3/45A, Gali No. 16, Phase-3B, Nangli Vihar Extension, New Delhi, appeared before HC Satish Kumar and got his statement recorded. In his complaint, he stated that he resides at the aforesaid address with his family and is engaged in private employment.

The complainant further stated that in August, 2022, the son of his neighbour Santosh Ram was urinating on a vacant plot, whereupon one person, later identified as Chetan Aggarwal, who resides two lanes away from his house, objected and abused the neighbour's son. The father of the boy also arrived at the spot and, thereafter, local residents intervened and got the matter compromised. However, during the said altercation, accused Chetan Aggarwal allegedly threatened the complainant by stating

that he would “see him later”.

The complainant further alleged that on 28.10.2022 at about 3:45 PM, while he was present at Bajrang Chowk, Jai Vihar, getting his motorcycle repaired from mechanic Javed, father of accused Chetan Aggarwal came there, saw him, and left the spot. After some time, accused Chetan Aggarwal arrived carrying a wooden stick (Danda) and started assaulting him. As a result of the assault, the complainant sustained injuries on his head, waist and shoulder. He was thereafter medically treated at DDU Hospital. The complainant further stated that mechanic Javed intervened and rescued him and requested that legal action be taken against accused Chetan Aggarwal.

On the basis of the aforesaid statement and the MLC of the injured, wherein the nature of allegations disclosed commission of offence punishable under Section 308 IPC, HC Satish Kumar got the present FIR registered. Thereafter, investigation of the present case was entrusted to the IO/SI concerned.

During investigation, accused Chetan Aggarwal @ Ganesh allegedly confessed to his involvement in the offence. Since sufficient incriminating material warranting arrest had surfaced, the accused was formally arrested in the present case.

Further, during investigation, result/opinion of MLC No. 9751/22 pertaining to injured Dharmender Kumar was also obtained from the concerned doctor, wherein the nature of injuries was opined to be “*Simple*”.

Upon completion of investigation, sufficient evidence

was found against accused Chetan Aggarwal @ Ganesh S/o Subhash Aggarwal for commission of offence punishable under Section 308 IPC.

Accordingly, charge-sheet/challan was prepared on the basis of statements of witnesses and material collected during investigation and was filed before the Ld. Magistrate.

3. On appearance before the Ld. MM, copy of chargesheet was supplied to accused in compliance of section 207 Cr.P.C and as offence punishable u/s 308 IPC is exclusively triable by the Court of Sessions, the matter was committed to the Sessions Court.

Charge against accused.

4. Charge under Section 308 IPC was framed against accused, to which he pleaded not guilty and claimed trial.

Witnesses examined

5. To substantiate the charge, prosecution has examined 09 witnesses in all. The brief summary of the deposition of prosecution witnesses is as under:

PW-1 Dharmender Kumar has deposed that in August 2022, accused Chetan Aggarwal had beaten two minor boys, namely Shubham and Shivam, with a belt for allegedly urinating near his shop and had also torn their clothes. When he and other neighbours questioned the accused regarding the incident, the accused allegedly threatened him by saying “tujhe dekh lunga”. Thereafter, on 28.10.2022 at about 3:45 PM at Bajrang Chowk, Jai Vihar, while he was present at the shop of mechanic Javed

for repair of his motorcycle, the accused allegedly came there carrying a white-coloured danda and assaulted him repeatedly on his head, neck, shoulder and back, causing him to fall on the ground and sustain injuries. Public persons intervened and the accused fled from the spot. PCR was called and the witness was taken to DDU Hospital where seven stitches were given on his head and X-ray was conducted. He further stated that on 29.10.2022 he lodged his complaint with the police vide Ex. PW1/A and also handed over CCTV footage of the incident through a pen drive vide seizure memo Ex. PW1/B along with copy of his Aadhaar Card. He correctly identified the accused, the weapon of offence i.e. danda Ex. P-1 and the pen drive containing photographs/CCTV footage of the incident, which is Ex. P-2.

During cross-examination, he deposed that he was employed as an Executive in Universal Sampo General Insurance at Pitam Pura and was 12th class pass. He stated that he had disclosed the names of Shubham and Shivam to the police, though the same were not recorded in his statement Ex. PW1/A. Upon confrontation, he admitted that in his statement he had referred only to “ladka”, but voluntarily said that he had in fact named both sons of Santosh Rai. He further admitted that he had not mentioned the number of the vacant plot in Ex. PW1/A, though he had seen the place where the boys were urinating. PW-1 admitted that the urination had taken place

in front of the shop of Chetan Aggarwal and near a vacant plot where Shubham and Shivam were present. He denied the suggestion that the story regarding urination was concocted due to a dispute over goods allegedly purchased on credit from the accused. He further denied that he had fabricated the case because the accused had refused to extend goods on credit and volunteered that he had never purchased any goods from the accused's shop. He admitted that the brother and occasionally the parents of accused used to sit at the shop. He also denied the suggestion that in August 2022 he had assaulted or abused the parents of accused or that any PCR call was made against him. He further stated that the shop of accused was situated after crossing two streets from his house, though he could not specify the distance. He denied the suggestion that neither he nor the accused were visible in the photographs contained in the pen drive. He stated that on 29.10.2022, between 10:30 AM to 11:00 AM, he visited the police station. Further, he denied all suggestions that he had not sustained any injuries or that no such incident had occurred, or that he had falsely implicated the accused in connivance with the police and Javed mechanic. He also stated that he did not know the shop number of Javed mechanic and denied the suggestion that he was deposing falsely.

PW-2/Javed Khan deposed that he works as a motorcycle mechanic and on 28.10.2022, Dharmender

Kumar came to his shop for repairing his motorcycle and at around 4 PM, accused came there along with a danda and started beating Dharmender Kumar, who was sitting at his shop. He, then, tried to save the complainant, but he sustained injuries, as accused hit him on his head with the said danda.

During cross-examination, he deposed that he is 5th class pass and at the time of incident he was working in the said shop, however, he is doing work in Mumbai since the last four months. Further he stated that he knew Dharmender for the past 2-3 years and he is having friendly relations with him. He denied the suggestion that no such incident took place on 28.10.2022 and he is deposing falsely at the instance of Dharmender. He further denied the suggestion that he had not called police on the date of incident, as no such incident took place and also denied that he had not taken Dharmender to hospital because he did not sustain any injury.

PW-3/WHC Pravesh deposed that she was posted at PS Ranhola as Head Constable. On 29.10.2022, IO/HC Satish came to the Duty Officer Room a/w rukka which was endorsed by her. On the basis of contents of rukka, she registered the present FIR through computed operator. The computer-generated copy of the FIR is Ex.PW-3/A and the relevant 65-B certificate was also issued i.e. Ex.PW-3/B.

This witness was not cross-examined on behalf of accused despite opportunity.

PW-4/ASI Vijender was posted at PS Ranhola as ASI and was working as DO. On 28.10.2022, he received information given by the caller regarding beating up of one person. He recorded the same vide DD No. 114A and placed on record requisite certificate u/s 65-B IEA.

This witness was also not cross-examined on behalf of accused despite opportunity.

PW-5/HC Ramesh Kumar deposed that on 28.10.2022, he was posted at PS Ranhola as Constable and was on emergency duty along with HC Satish. On receipt of the call regarding quarrel, He along with HC Satish went to the spot, where it was revealed that injured had been taken to a private hospital. HC Satish made call to caller and who told himself to be injured. Thereafter, he came to PS and he was taken DDU Hospital for medical examination. He was then referred to a higher centre, where he went with his relative. He returned to the PS and handed over the MLC to HC Satish. On the next day, victim/injured again visited PS and lodged his complainant pursuant to which FIR was registered and investigation was carried out by SI Balram Singh, who visited the spot with complainant and him. Site plan was prepared on the instance of complainant/injured and it was told by the complainant that accused was resident of same area. Thereafter, it was deposed that accused was arrested vide arrested memo Ex.PW-5/B and the white color wooden danda was recovered from his instance vide Seizure Memo

Ex.PW-5/C. Later on, the said white color wooden danda (produced by MHC(M)) as well as accused were correctly identified by the witness in the court.

During cross-examination he deposed that though his duty hours on 28.10.2022 was from 08:00 AM to 08:00 PM, a call was received at about 09:30 PM, however, he was unaware whether the said call had been made by the injured himself or by some other person. He stated that they reached the spot within about 20–25 minutes and went near House No. C-3/45, Gali No.16, Nangli Vihar, which, according to him, was the address of the caller. He further stated that they remained at the spot for about 5–10 minutes and came to know that the injured had already been taken to a private hospital by certain public persons, though he did not know the names of any such persons. He admitted that he did not make any arrival entry upon returning to the police station. He further stated that the injured came to the police station at about 11:00 PM, though he did not know by which mode of transport he had reached there. He noticed a bandage on the head of the injured but did not inquire as to where the injured had taken first aid. He further stated that approximately one hour was spent at DDU Hospital for medical examination and thereafter he returned to the police station after leaving the injured at the hospital as the latter had been referred to a higher centre. The witness further deposed that on the next day i.e. 29.10.2022, the complainant/injured again

came to the police station at about 09:30 AM. He denied the suggestions that the injured had not come to the police station in his presence on 29.10.2022; that he never joined the investigation; that the accused was not arrested in the manner deposed by him; that no danda was recovered from the accused and the same had been planted upon him; that all writing work was conducted while sitting in the police station; or that he was deposing falsely.

PW-6 Retrd. SI Balwan Singh deposed that on 29.10.2022, while posted as SI at PS Ranhola, investigation of the present case was assigned to him after registration of FIR u/s 308 IPC by HC Satish Kumar. During investigation, he visited the spot along with the complainant/injured and HC Ramesh and prepared the site plan at the instance of the complainant. He further stated that thereafter accused Chetan Aggarwal was searched and found at Gali No. 12, Jai Vihar, Phase-3, Baprola, Delhi, whereupon during interrogation the accused allegedly got recovered a white-painted wooden danda used in the commission of offence. The danda was seized vide seizure memo Ex.PW5/C. He further deposed that accused was arrested vide arrest memo Ex.PW5/B and his personal search memo Ex.PW6/A was prepared. He also prepared age memo Ex.PW6/B as accused disclosed his age to be 19 years. Disclosure statement of accused Ex.PW6/C was recorded and the recovered danda was deposited in malkhana. Further, he stated that on 10.11.2022

complainant handed over a Sandisk red and black pendrive allegedly containing CCTV footage of the incident, which was seized vide memo Ex.PW1/B. He recorded statements of witnesses, obtained opinion on MLC declaring injuries as simple in nature, and after completion of investigation filed the charge-sheet against the accused. He correctly identified accused Chetan Aggarwal before the Court. He also identified the case property i.e. white wooden danda Ex.P1. The pendrive Ex.P2 was played in Court and was found containing videos and photographs allegedly showing accused holding a white danda and assaulting the victim.

During cross-examination, he stated that investigation was assigned to him at about 2:00 PM and HC Ramesh was sent to call the accused at about 3:00 PM. He admitted that address of accused was not mentioned in the FIR and stated voluntarily that complainant had informed him about the same. He admitted that complainant was already present at the PS when investigation was taken up and that he did not mention time in notice u/s 160 CrPC served upon accused. He further admitted that accused was arrested at PS Ranhola after joining investigation. He denied the suggestion that accused had been detained in the PS prior to registration of FIR. He admitted that he had viewed contents of the pendrive in PS Ranhola and further admitted that neither the DVR containing original footage was seized nor

pendrive was sent to FSL, stating that there was no specific reason for the same. He also admitted that he cannot tell the original source of photographs and videos contained in the pendrive. Suggestions regarding manipulation of videos and false implication were denied. He admitted that no finger prints were lifted from the alleged danda and it was not sent for FSL examination. He further denied the suggestion that danda was planted upon accused. He further admitted that he did not collect documents from the private doctor who allegedly treated complainant prior to MLC and also did not examine the said doctor. He denied the suggestion that signatures of accused were obtained in the PS itself. He admitted that he did not obtain mobile phone location of accused or complainant to verify their presence at the spot. He denied the suggestion that the same was intentionally omitted as no incident had occurred. He stated that he had visited house of accused on 29.10.2022 but did not remember the exact time. He further admitted that he had not recorded statement of any independent witness except one person namely Javed. He denied suggestion that site plan and proceedings were prepared while sitting in the PS. He admitted that he never visited complainant's house and that address of the shop/place of incident was not mentioned in the site plan. He further stated that he could not tell exact distance between place of incident and house of accused, nor details of any CCTV camera installed at the spot. He admitted that

he did not inquire into previous criminal involvement of complainant. Suggestions regarding false implication and false deposition were denied.

PW-7 HC Satish deposed that on 28.10.2022, while posted at PS Ranhola, he received PCR call vide GD No. 114A and along with HC Ramesh reached the spot, where he learnt that the injured had already gone to some hospital. He contacted the caller telephonically, who informed him that after taking treatment from a private doctor, he would come to the Police Station. Thereafter, the caller brought injured Dharmender Kumar Shah to the PS and PW-7 got him medically examined at DDU Hospital. As the injured was in pain, he requested that his statement be recorded later. On 29.10.2022, complainant Dharmender Kumar Shah came to the PS and got his complaint/statement recorded, Ex. PW1/A, bearing attestation of PW-7 at point X. PW-7 further deposed that he prepared rukka Ex. PW7/A bearing his signature at point X and handed over the same to the Duty Officer for registration of FIR with a request to assign investigation to SI Balwan.

During cross-examination, PW-7 stated that he did not know the name and address of the caller with whom he had spoken regarding the location of the injured. He admitted that although he had inquired about the private doctor, the complainant stated that the medical documents were lying at his home and due to pain he could not give

statement earlier. PW-7 further admitted that he had not specifically asked the name of the private doctor or hospital where initial treatment was taken. He stated that the complainant came to the PS on 29.10.2022 at about 12 noon and he was present at the PS at that time. He further stated that, to the best of his recollection, the injured was having a bandage on his head. He denied the suggestions that he was not present at the PS when the injured arrived on 29.10.2022 or that he had himself written the complaint or that the accused was falsely implicated at the instance of the complainant or that he had not visited the spot and was deposing falsely.

PW-8 Dr. Nikunj Valia deposed that from 26.08.2022 to 10.04.2023, he was working as Junior Resident in the Emergency Department of DDU Hospital. On 28.10.2022 at about 11:22 PM, injured Dharmender Kumar, aged about 35 years, was brought to the emergency department by HC Ramesh of PS Ranhola with alleged history of physical assault. On examination, the patient was found conscious and oriented. He noticed CLW over the occipital region and a large bruise over the left flank/lower back side. Considering the head trauma, the patient was referred to a higher centre for neurosurgery opinion/treatment. He proved the MLC No. 9751 dated 28.10.2022 as Ex. PW8/A, prepared in his handwriting and bearing his signatures.

In his cross-examination, PW-8 stated that he is an

MBBS doctor and that the wounds of the patient were cleaned/opened and preliminary treatment was provided. No ointment or bandage was found applied at the time of examination. He admitted that there was no mention of blood stains in the MLC and he could not recollect whether there were blood stains on the body or clothes of the patient. He further stated that the vital signs of the patient were normal and no pathological samples were taken. He opined that the injuries could be caused both by a fall or by assault. He also stated that though the injuries might have been caused within about 30 minutes prior to examination, he could not state the exact duration between the injuries and medical examination and that such opinion could be better given by a forensic expert.

PW-9 Dr. Chatrathi Avinasj Vijay deposed that he was working as DNB Resident in the Department of Surgery, DDU Hospital from August 2020 to August 2023 and was acquainted with the handwriting and signatures of Dr. Kaushik Shet, having seen him writing and signing during official duties. He stated that Dr. Kaushik Shet had left the hospital service and his present whereabouts were not known. He identified the handwriting, signatures and seal of Dr. Kaushik Shet on MLC No. 9751 dated 29.10.2022 pertaining to injured Dharmender Kumar, already exhibited as Ex. PW8/A. As per the MLC, the patient had alleged history of physical assault at about 05:00 PM as told by self. He further stated that the opinion

regarding the injuries was given as “simple” from the general surgery side. No cross-examination of the said witness was conducted despite opportunity.

Electronic Evidence

6. In addition to above, IO seized the CCTV footage of the incident in pen drive and the same is Ex.P-2. PW-1/Dharmender Kumar, during his testimony, was shown the CCTV footage on record, which was installed nearby and he deposed that he saw the accused herein removing the gamcha from the said danda and then saw its color. Further, he identified the accused in the said CCTV footage.

Statement and Defence of accused.

7. During the course of recording of Statement of accused u/s 313 Cr.PC, all incriminating evidence was put to the accused person, in response to which, accused has stated that he has been falsely implicated and claimed himself to be innocent. He has further stated that this is a false case against him, as his mother, who was running the grocery shop refused to give items/goods to complainant on credit basis, due to which, he had a grudge against them and as a result, lodged the present case FIR. Further, in response to the question w.r.t leading defence evidence, accused replied that he does not wish to lead any defence evidence.

Arguments

8. Arguments were addressed by Ld. Addl. PP for the State as also by Ld. Counsel for accused.

9. It has been argued by Ld. Addl. PP for State that prosecution has proved its case beyond reasonable doubt. It has been further argued that complainant has fully supported the prosecution case during his examination and has also identified the accused as well as weapon of offence correctly before the court. It has also been argued that version of complainant has been fully corroborated by an eye witness and other witnesses too have duly proved the case of prosecution, therefore the accused person is liable to be convicted of the offence with which he has been charged.
10. Per contra, Ld. Defence Counsel for accused has argued that case of prosecution is based on a totally false and concocted story and in fact, complainant has falsely implicated the accused in the present case on account of previous enmity, wherein complainant has purchased goods from accused on credit and just to evade his liability, he has concocted the whole story of urinating. He further argued that testimony of complainant does not find any corroboration and no motive or intention has been attributed to the accused to commit the offence. Therefore, accused person deserves to be acquitted.

Analysis/ Appreciation of Evidence

11. Before proceeding to analyze and appreciate the evidence on record, it is profitable to refer to the case of ***Sampath Kumar Vs Inspector of Police Krishangiri 2012 (2) RCR(Criminal)231*** wherein while referring to ***Vadivelu Thevar Vs. State of Madras AIR 1957 SC 614***, the Hon'ble Supreme Court has discussed about three categories of witnesses: those who are wholly

reliable, those who are wholly unreliable and those who are neither wholly reliable nor wholly unreliable.

12. In the case of first category, the courts have no difficulty in coming to the conclusion either way. It can convict or acquit the accused on the deposition of single witness if it is found to be fully reliable. In the second category also, there is no difficulty in arriving at an appropriate conclusion for there is no question of placing any reliance upon a deposition of a wholly unreliable witness. It is only in the case of witnesses who are neither wholly reliable nor wholly unreliable that the Courts have to be circumspect and have to look for corroboration in material particulars by reliable testimony direct or circumstantial.

13. Reliance can also be placed on ***Balu Sudam Khalde and Anr. Vs State of Maharashtra*** Criminal Appeal No. 1910 of 2010, wherein the Hon'ble Supreme Court dealt with the question as to how the testimony of any injured eye witness is to be appreciated. The relevant observations are reproduced here as under:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

14. In the case in hand, PW1/complainant Dharmender Kumar has turned out to be a witness of first category stated above in ***Sampath Kumar (Supra)***, as he has deposed about the entire incident in a consistent and cogent manner, in consonance with the prosecution version. He has deposed that in August 2022, accused Chetan Aggarwal had beaten two minor boys, namely Shubham and Shivam, with a belt for allegedly urinating near his shop and had also torn their clothes. He has further stated that when he and other neighbours questioned the accused regarding the incident, the accused allegedly threatened him by saying “tujhe dekh lunga”. Thereafter, on 28.10.2022 at about 3:45 PM at Bajrang Chowk, Jai Vihar, while he was present at the shop of

mechanic Javed for repair of his motorcycle, the accused allegedly came there carrying a white-coloured danda and assaulted him repeatedly on his head, neck, shoulder and back, causing him to fall on the ground and sustain injuries. Public persons intervened and the accused fled from the spot. PCR was called and the witness was taken to DDU Hospital where seven stitches were given on his head and X-ray was conducted. He further stated that on 29.10.2022 he lodged his complaint with the police vide Ex. PW1/A and also handed over CCTV footage of the incident through a pen drive vide seizure memo Ex. PW1/B along with copy of his Aadhaar Card. He correctly identified the accused, the weapon of offence i.e. danda Ex. P-1, and the pen drive containing photographs/CCTV footage of the incident Ex. P-2. During cross examination of PW1, nothing substantial could be elicited on record, which may diminish or discredit the evidentiary value of his testimony.

15. PW-2/Javed Khan has also turned out to be a witness of sterling quality. He has been cited as an eye witness to the incident by the prosecution and he has given a consistent statement, thereby corroborating the testimony of complainant. He has deposed in line with the prosecution case by stating that he works as a motorcycle mechanic and on 28.10.2022, Complainant/ Dharmender Kumar came to his shop for repairing his motorcycle and at around 4 PM on the day of incident, accused came there along with a danda and started beating Dharmender Kumar, who was sitting at his shop. He then tried to

save him, but complainant sustained injuries, as accused hit him on his head with the said danda.

16. The other witnesses i.e. PW3 to PW9, who are either police officials or Doctors, have all corroborated the version of complainant as well as the case of prosecution against the accused in their respective testimonies and during their cross examination, if any, nothing adverse to the case of prosecution has come out.

17. Further, it has been contended by Ld. Counsel for accused that accused has been falsely implicated in the present case on account of previous enmity between complainant and accused due to quarrel that took place between them in August 2022, upon urination by Shubham and Shivam on the vacant plot near his shop and also, on account running away from the liability to pay for the goods taken by the complainant from the shop of accused. Further, a suggestion in this regard was also given during cross examination of complainant and during his statement under Section 313 Cr. PC, accused had also taken a similar defence. However, it is pertinent to mention that it is settled law that mere suggestions cannot create reasonable doubt without supporting evidence being there to substantiate the defense put forth. In the case in hand, suggestions/defense put forth have remained merely bald suggestions, as accused has neither examined any witness to substantiate his defence nor placed anything else on record otherwise in support of the same. Thus, this court does not find any force in the contention raised by Ld. Defence Counsel and the same is accordingly rejected.

18. Pertinently, the CCTV footage of the incident i.e. Ex. P-2, which was handed over by the complainant and seized by the IO, constitutes an important piece of electronic evidence within the purview of Indian Evidence Act and is admissible in evidence subject to compliance with the essential ingredients relating to the same. The said footage assumes significant evidentiary value as it captures the whole incident and provides an objective account of the same along with sequence of events and actions of the accused immediately preceding the incident, however, in the case in hand, said footage may not by itself, be the sole basis upon which prosecution may prove its case, as the said footage has neither been sent to FSL concerned for the purpose of ascertaining its veracity nor it is supported by a requisite certificate in terms of Indian Evidence Act u/s 65-B nor the source of the same has been disclosed anywhere in the present case by the IO, which otherwise warrants suitable action against him for dereliction of duty.

19. However, despite the abovesaid omission, this court cannot lose sight of the fact that it has never been disputed on behalf of accused either during the course of cross examination or during recording of Statement of accused u/s 313 CrPC that CCTV footage has not been kept on record in accordance with law nor an objection has ever been raised on behalf of accused that he has never been supplied a copy of the said footage. Although, it cannot be ignored that the CCTV footage on record has not been proved as per law herein, but in the facts and circumstances as discussed above, it may still be put to use as a

supportive or corroborative piece of evidence in addition to the oral testimonies of Complainant, eye witness and other witnesses. In the present case, PW-1 Dharmender Kumar, during his examination, upon being shown the said footage, categorically identified the accused and deposed that he saw the accused removing the gamcha from the danda and thereafter, noticed its color. Such an identification from the CCTV footage corroborates his version regarding the conduct and presence of accused at the relevant time on the spot as well as the manner in which the incident has taken place. Thus, the CCTV footage can be used to a limited extent to substantiate the prosecution's case by providing independent electronic corroboration to ocular evidence on record.

20. Importantly, the testimony of complainant (PW1) has remained unimpeached and nothing adverse could be elicited out of him during his cross examination. Also, no material contradiction vis-à-vis the prosecution case could be brought forward during the course of his evidence, which makes it trustworthy as well as reliable and there is no reason whatsoever to disbelieve the same. Further, testimony of complainant has been well corroborated by the testimony of eye witness Javed Khan (PW2) on record coupled with medical evidence, which has been duly proved. In addition to above, the case of the prosecution has been further corroborated by CCTV footage as well as relevant photographs pertaining to the incident on record. Also, the weapon of offence i.e. danda was recovered at the instance of accused and the same was duly identified by the

complainant and other witnesses during the course of their testimonies. Suffice it to state that evidence on record has proved beyond reasonable doubt that accused had inflicted injuries to the complainant on his head and other body part by using a danda i.e. weapon of offence.

21. Now, advertent to the discussion as to whether accused is liable u/s 308 IPC or not. Ld. counsel for the accused has submitted that the prosecution has failed to prove the requisite intention of the accused to commit culpable homicide not amounting to murder, as the nature of injury sustained is simple, as opined by the doctor. Therefore, accused cannot be convicted for the offence u/s 308 IPC.

22. In order to constitute an offence under Section 308 IPC, it has to be proved that the act was committed by the accused with an intention or knowledge to commit culpable homicide not amounting to murder and that offence was committed under such circumstances that if the accused, by that act had caused death, then he would have been guilty of culpable homicide. It depends upon the facts and circumstances of each case whether the accused had the intention to cause death or knew in the circumstances that his act was going to cause death. The nature of weapon used, the intention expressed by the accused at the time of the act, the nature and extent of the injuries, parts of the body of victim where injuries were inflicted, severity of the blow and the conduct of the accused are important factors which may be taken into consideration for ascertaining whether in a particular case, accused can be proceeded under Section 308 IPC

or not. In a case under Section 308 IPC, the most important circumstance would be that an act should have been committed with intention or knowledge to commit culpable homicide not amounting to murder. It was held in the case of ***Bishan Singh and Anr. Vs. State (2007) 13 SCC 65*** by the Hon'ble Supreme Court that existence of requisite intention or knowledge is a *sine qua non* for conviction under Section 308 IPC. No doubt, the requisite intention or knowledge on the part of accused to cause culpable homicide is required to be proved, but the same can also be inferred from the act or the attempt to commit the alleged offence.

23. In the present case, as per the testimony of complainant, on 28.10.2022 at about 3:45 PM at Bajrang Chowk, Jai Vihar, while he was present at the shop of mechanic Javed for repair of his motorcycle, the accused allegedly came there carrying a white-coloured danda and assaulted him repeatedly on his head, neck, shoulder and back, causing him to fall on the ground and sustain injuries. This court cannot ignore the fact that that due to hitting of white coloured wooden danda, injury was sustained by the complainant on his body and head, more specifically superficial abrasion on lateral side of left eye. Even though nature of injury caused to the complainant was simple, but still, it is indicative of the intention of the accused to cause injury on the vital part of the body. Moreover, premeditation on the part of accused can be seen in the CCTV footage, wherein it can be clearly seen that accused was going in the gali towards the shop of PW-2 and suddenly upon noticing the complainant sitting there, went back and then soon thereafter, came back with a

danda and moved towards the shop, carrying the said danda in a concealed manner and all of a sudden started hitting the complainant repeatedly with all the force, upon which Complainant fell down. The complainant has correctly identified the accused as well as the danda during his examination in chief and moreover this court cannot lose sight of the manner in which injury has been inflicted as well as severity of the blows and the conduct of the accused before and after the incident, when accused had run away extending life threats to the complainant. Thus, all the said factors taken cumulatively point towards the fact that prosecution has been able to prove its case beyond reasonable doubt and necessary intention or knowledge can be attributed to the accused on his part to commit attempt to culpable homicide punishable u/s 308 IPC.

24. Thus, in the light of above discussion and keeping in view the facts and circumstances of the present case, **accused Chetan Aggarwal @ Ganesh is held guilty and is convicted for the offence punishable under Section 308 IPC.**

25. Let the convict be heard on the point of sentence.

26. However, before parting, this Court is constrained to observe that the investigation conducted in the present matter suffers from serious lapses and reflects clear dereliction of duty on the part of the Investigating Officer/SI Balwan Singh. Despite the CCTV footage having been admittedly supplied by the complainant and seized vide seizure memo Ex. PW-1/B during the course of investigation/examination, the same was neither made part of the charge-sheet nor sent for analysis to FSL

concerned. Furthermore, no certificate under Section 65B of the Indian Evidence Act was obtained or placed on record so as to make an effort to prove said electronic evidence in accordance with law. This omission assumes greater significance in view of the fact that the CCTV footage prima facie depicts circumstances relevant to the incident and casts light upon the motive and conduct of the accused to attack the complainant and at the same time, reveals the intention and surrounding circumstances leading to the occurrence, however, due to the negligent and casual approach of the Investigating Officer, such material evidence, in a way has become inadmissible and it may well be said that the same has almost been frittered away.

27. The conduct of the Investigating Officer, therefore, not only amounts to failure in discharge of statutory duties but has also adversely affected the fairness and completeness of the investigation. Such lapses cannot be viewed lightly, especially when the electronic evidence has the potential to materially assist the Court in arriving at the truth. The investigation, thus, stands shadowed by avoidable omissions attributable solely to the negligence and lack of diligence on the part of the Investigating Officer.

28. In view of the aforesaid observations, this Court deems it appropriate to direct the Senior Supervisory officials of the Police Department/ DCP concerned to conduct a departmental inquiry into the conduct of the Investigating Officer with respect to the lapses noted hereinabove and to take appropriate action in accordance with law.

29. A copy of this judgment be forwarded to the DCP concerned for necessary information, action, and compliance.

**Announced in Open Court
on 04.06.2026**

**(Vineet Kumar)
ASJ-02/West/THC**