



2025:DHC:9053



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 08.09.2025
Pronounced on : 09.10.2025

+ **CRL.A. 1085/2024**

GAJRAJ @ AMIT @ KALICHARANAppellant
Through: Mr. Manjeet Mathur and Mr.
Rajbardhan Singh, Advocates

versus

STATE NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal, the appellant seeks setting aside of the judgment of conviction dated 03.09.2024 rendered by the learned Principal District & Sessions Judge, North West, Rohini Courts, New Delhi in FIR No. 725/2017 registered under Sections 307/34 IPC at P.S. Begumpur. The appellant further seeks setting aside of the consequential order on sentence dated 07.10.2024, whereby he has been sentenced to undergo rigorous imprisonment for 5 years along with a fine of Rs.10,000/-, and in default of payment of fine, to further undergo simple imprisonment for 6 months. The fine was directed to be paid to the victim as compensation. The benefit of Section 468 BNSS was also extended to the appellant.

2. The subject FIR came to be registered in the context of an incident



that took place on 01.12.2017 in the office of the injured complainant/*Mohd. Salim*. As per the prosecution case, at about 8:20 P.M., 3-4 accused persons entered the office of the injured and started abusing him by saying, “*sale tu yahan par makanon ki kharid farokt bandh kar, apna boriya bistra utha aur yahan se bhag ja*”. When the injured asked them not to abuse, one of the accused carrying a *danda* hit him on his right hand, resulting in a scuffle. At that time, another accused, while uttering the words “*yaha aise nahi manega, main abhi iska kaam tamam kar deta hoon*”, took out a pistol and fired at the injured. When the injured tried to save himself, the bullet hit him on his left thigh. Thereafter, all the accused persons attempted to flee. While the other accused persons ran away, the appellant, who was attributed the role of hitting the injured with a *danda*, was apprehended. He was given beatings by public persons and he disclosed his name as *Amit*. He was then handed over to the police. The injured was taken to Brahm Shakti Hospital. Later, another accused person, the one who had fired upon the injured, was also apprehended. He was tried as a CCL before the Juvenile Justice Board.

On completion of investigation, the charge-sheet was filed. Thereafter, the Trial Court framed charges under Sections 307/34 IPC, to which the appellant pleaded not guilty and claimed trial. The prosecution examined 13 witnesses in total, the material witnesses being the injured *Mohd. Salim* (PW-1), the eyewitnesses *Yogesh* (PW-2) and *Afzal* (PW-3), as well as Dr. *Kapil Goel* (PW-5) and Dr. *Subhash* (PW-7), who proved the MLC of the injured. The other witnesses were police officials, who deposed about various aspects of the investigation.

3. While assailing the impugned judgment, learned counsel for the



appellant contended that the role ascribed to the present appellant is only that of hitting with a *danda*; however, the said *danda* was not recovered. Further, the MLC of the injured does not record any injury on the hand or any injury corresponding to the allegations. It was further submitted that one of the independent witnesses, namely *Yogesh*, did not support the prosecution case.

4. Learned APP for the State, on the other hand, defended the impugned judgment. It was submitted that the deposition of the injured is duly corroborated by the testimony of another eyewitness, *Afzal*, as well as by his own MLC.

5. The injured *Mohd. Salim* deposed that on the date of the incident, he, along with his brother *Afzal* and his landlord, was sitting in his office at about 8:20 P.M. when 3–4 persons came there and started abusing him, saying, “*sale tu yanha par makanon ki kharid farokt bandh kar apna boriya bistra utha or yanha se bhag ja*”. On being requested not to abuse, the appellant, who was one of the said persons and carrying a *danda*, gave a *danda* blow on his right hand, resulting in a scuffle between the parties. Another person then took out a pistol from his left side and uttered, “*yaha aise nahi manega, main abhi iska kaam tamam kar deta hu*”, whereafter he fired a gunshot, hitting the witness on his left thigh. While the others managed to escape, the person who had hit the injured with the *danda* was apprehended at the spot. The said person was identified as the present appellant.

In cross-examination, the witness admitted that he did not know the accused persons prior to the incident and further had no prior enmity with



them. He clarified that the words, “*sale tu yanha par makanon ki kharid farokt bandh kar apna boriya bistra utha or yanha se bhag ja*”, were uttered by the appellant. He was taken to the hospital by *Yogesh* on his motorcycle, and *Afzal* also reached the hospital on a separate motorcycle. Later, the witness was referred to Balaji Action Hospital. He denied the suggestion that the appellant was falsely implicated or that he was not apprehended at the time of the incident.

6. *Yogesh*, the landlord, examined as PW-2, did not support the prosecution case. He was cross-examined by the learned APP and denied all suggestions. When confronted, he denied that his statement was recorded under Section 161 Cr.P.C. and, when his attention was drawn to the appellant, he failed to identify him.

7. *Afzal*, the brother-in-law of the injured, was also present at the time of the incident. His testimony was cumulative to that of the injured. He identified the appellant as the person who had inflicted injuries with the *danda* on the hand of the injured. In cross-examination, he admitted that besides the bullet wound, he had not noticed any visible injury on the body of the injured.

8. Dr. *Kapil Goel*, Orthopedic Surgeon, Brahm Shakti Hospital, examined as PW-5, deposed that the injured was medically examined by Dr. *Subhash*, the then CMO. He stated that the injured was admitted on that day under his supervision. The wound on his left mid-thigh was bleeding. The injured remained admitted for one hour, whereafter his relatives shifted him to another hospital. The injuries were opined to be grievous. In cross-examination, the witness denied the suggestion that the injury had been



opined as grievous without proper examination or in a casual manner.

9. Dr. *Subhash*, CMO, Brahm Shakti Hospital, examined as PW-7, deposed that on 01.12.2017 he was posted as CMO when the injured came with the alleged history of a gunshot wound at the mid-thigh. He stated that he examined the injured vide MLC (Ex. PW-5/A). In cross-examination, he stated that there was no other injury on the complainant apart from the gunshot wound.

10. In his statement under Section 313 Cr.P.C., the appellant claimed false implication and denied the occurrence of any incident as alleged. He further stated that he had been apprehended by the police from his house.

11. The first information about the incident was recorded vide DD No. 29A on 01.12.2017 at 8:42 P.M., wherein it was noted that a caller had informed that a person had sustained a bullet injury and had been taken to Brahm Shakti Hospital. The presence of the injured at the spot of the incident is natural, it being his office. The *tehrir* was prepared at 10:30 P.M. on the statement of the injured, wherein he stated that he was present in the office with his brother *Afzal* and landlord *Yogesh*. The appellant was apprehended at the spot. Though the landlord turned hostile and did not support the prosecution case, the testimony of the injured finds sufficient corroboration from the testimony of *Afzal* as well as from his own MLC. Insofar as identification of the appellant is concerned, as noted above, he was arrested at the spot. With regard to his role, it was stated that the accused had given a *danda* blow on the right hand of the injured. Although the MLC does not record any corresponding injury and the *danda* was not recovered, in light of the presence of the appellant at the spot being



established, these factors are not fatal to the prosecution case. The appellant, along with the other assailants, had come to the office of the injured with a premeditated plan. It was the appellant who uttered the words “*sale tu yahan par makanon ki kharid farokht bandh kar, apna boriya bistra utha aur yahan se bhag ja*”. The appellant himself then gave a *danda* blow after uttering the said words. The infliction of the *danda* blow was followed by the co-accused firing a gunshot. While it is apparent from the above that the accused persons had entered the office of the injured with a common intention and that the appellant stands convicted with the aid of Section 34 IPC, it is pertinent that the role attributed to the appellant is limited only to that of inflicting a *danda* blow on the hand of the injured.

12. The firearm injury on the left thigh of the injured was caused by a co-accused, who was sent to face trial before the Juvenile Justice Board as a CCL. The evidence does not disclose that the appellant was armed with any deadly weapon, nor that he inflicted any injury which, in the ordinary course of nature, was sufficient to cause death. Significantly, the MLC also does not record any corresponding injury on the hand of the injured attributable to the alleged *danda* blow.

13. In order to sustain a conviction under Section 307 IPC, the prosecution must establish that the act was done with such intention or knowledge that if death had been caused, the offence would amount to murder. The presence of intention or knowledge is *sine qua non*. When assessing whether an offence committed falls under the provision of Section 307 IPC, the intention to commit the offence can be gathered from the nature of injury as well as other attending circumstances like the seat of the injury,



the nature of the weapons used, and the severity with which the blows were inflicted. The act may not even result in an injury. As such, it is the intention or knowledge with which the act was committed which is to be considered. The ingredients of the Section are satisfied if the prosecution is able to prove the intent and for its execution, commission of some overt acts (Ref: State of Maharashtra v Balram Bama Patil¹). The Supreme Court, in the case of Sivamani v. State², discussed the law prevailing around Section 307 IPC in the following manner:-

9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ‘...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.’ The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, ‘The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.

14. In the present case, although the appellant participated in the incident along with the co-accused persons, the evidence on record does not establish that he shared the requisite intention or knowledge to cause the death of the injured. His role was confined to using a *danda*, and not to the firing of the pistol. With due regard to the above, it is also pertinent to note that the

¹ (1983) 2 SCC 28



evidence on record makes it apparent that the appellant actively participated in the incident along with the co-accused persons. In light of the statement attributed to him and his act of dishing out a blow to the injured victim with a *danda*, it is clear that he shared the common intention to cause injuries of a serious nature to the victim. A gunshot injury was caused to the victim on his thigh.

Concededly, the injured has stated that he had never met the appellant earlier, there was no prior enmity and the appellant's role was limited to asking the injured to shift his business elsewhere and hitting the injured with a *danda* once, that he has already undergone incarceration for about two years, and keeping in view the overall circumstances of the case, his conviction is modified from Section 307 to Section 308 IPC.

15. The latest nominal roll on record reflects that the appellant has already undergone incarceration for a period of about 2 years. Further, learned counsel for the appellant has submitted that the appellant is about 30 years of age, unmarried, and the sole breadwinner of his family comprising his mother and the children of his deceased brother. In the peculiar facts of the case, this Court is of the considered view that the ends of justice would be met if the substantive sentence of the appellant is modified to the period already undergone by him.

16. The sentence of the appellant in default of payment of fine, however, is maintained. In case the appellant fails to pay the fine amount imposed upon him by the Trial Court, he shall undergo the sentence in default as directed.

² 2023 SCC OnLine SC 1581



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17. The present appeal is partly allowed in the above terms.
18. A copy of this judgment be communicated to the Trial Court as well as the Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 09, 2025
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