

(2026) 02 DEL CK 1805
In the Delhi High Court
Case No : Criminal Appeal No.143 Of 2017

Tasleem & Ors.

APPELLANT

Vs

State (Gov T. Of Nct Of Delhi)

RESPONDENT

Date of Decision : 26-02-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 207, 209, 232, 235(1), 313(1)(b), 374
Indian Penal Code, 1860 — Section 34, 308, 341,

Citation : (2026) 02 DEL CK 1805

Hon'ble Judges : Chandrasekharan Sudha, J

Bench : Single Bench

Advocate : Vivek Sood, R.K. Kochar, Abhishek Varma, Ajay Vikram Singh

Final Decision : Allowed

Judgement

Chandrasekharan Sudha, J

1. In this appeal under Section 374 of the Code of Criminal Procedure, 1973 (the Cr.P.C), the accused persons in Sessions Case No. 103/2016 on the file of the Additional Sessions Judge, Shahdara District, Karkardooma Courts, Delhi, assails the judgment dated 17.01.2017 and order on sentence dated 21.01.2017 as per which the accused persons have been convicted and sentenced for the offence punishable under Section 308 read with Section 34 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case in brief is that on 04.04.2012 at around 11:30 PM, the accused persons in furtherance of their common intention, wrongfully restrained PW2 and voluntarily caused bodily injury on his head and stomach with an iron rod and a brick with the intention and knowledge that, if they by that act caused death, they would be guilty of culpable homicide not amounting to murder. Hence, the accused persons are alleged to have committed the offences punishable under Sections 341, 308 read with Section 34 IPC.

3. On the basis of Ext. PW8/A FIS of PW3, given on 05.04.2012, Crime no.

127/2012, Jagat Puri Police Station, that is, Ext. A-1 FIR was registered by the Assistant Sub-Inspector. PW8, Sub-Inspector, conducted investigation into the crime and on completion of the same filed the charge-sheet/final report alleging commission of the aforesaid offences.

4. When the accused persons were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.PC. Thereafter, in compliance of Section 209 Cr.P.C, the case was committed to the Court of Session concerned. On appearance of the accused persons and after hearing both sides, the trial court as per order dated 21.01.2015, framed a Charge under Sections 341, 308 read with Section 34 IPC, which was read over and explained to the accused persons, to which they pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 8 were examined and Exts. PW1/P-1, PW1/A, PW2/A-B, PW3/A, PW5/A, PW6/A, PW7/A-C, PW8/C-F A-1, A-3, A-4, A-5, A-6, A-7, A-8, A-9 and A-10 were marked.

6. After the close of the prosecution evidence, the accused persons were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. The accused persons denied all those circumstances and maintained their innocence. They claimed that they had been falsely implicated in the case.

7. After questioning the accused persons under Section. 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888). Here, the accused persons have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

8. No oral or documentary evidence was adduced by the accused persons.

9. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, vide the impugned judgment dated 17.01.2017, found the accused persons guilty of the offence punishable under Section 308 read with Section 34 IPC. Vide order on sentence dated 21.01.2017, all accused persons have been sentenced to simple imprisonment for a period of 3 years and to fine of ₹ 25,000/-, and in default of payment of fine, to simple imprisonment for a period of 06 months.

10. It was submitted by the learned senior counsel for the appellants that there are material contradictions in the testimony of all the witnesses. PW2, PW3, PW4 and PW6 have turned hostile and does not support the version of prosecution, nor did they attribute any specific role to any of the appellants. In such

circumstances, the trial court grossly erred in convicting the appellants/accused persons.

11. Per contra, the learned Additional Public Prosecutor, while supporting the impugned judgment, submitted that there is no infirmity in the impugned judgment calling for an interference from this Court.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether the conviction entered and sentence passed against the appellants/accused persons by the trial court are sustainable or not.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW 8/A FIS of PW2, the injured, reads thus:- On 02.04.2012, he asked Janu (A3) not to park the latter's motorcycle in front of his fruit cart. A3 started abusing him and left the spot after threatening that he would "see him" later. On 04.04.2012, at about 11:30 PM, after closing his fruit cart, he went to Chaupal Khureji to get food. When he reached near the Masjid at Chaupal Khureji, Janu (A3), along with his brothers Kale (A2) and Tasleem (A1), arrived there carrying iron rods and sticks. Janu stopped him and told him that he had been behaving arrogantly and they would teach him a lesson and thereafter, started abusing him. At that time, Tasleem (A1) caught hold of his hands, while Kale (A2) attacked him on his head, stomach, and hand with an iron rod. Janu (A3) then picked up a brick and struck him on his head. Due to the injuries sustained on his head and the other parts of his body, he fell down. Someone informed his brother, Talib (PW4), who reached the spot and took him to the L.B.S. Hospital. All three brothers, Janu (A3), Kale (A2), and Tasleem (A1), jointly caused him serious injuries by attacking him with iron rods, sticks, and bricks.

15. PW2, when examined before the trial court, deposed that he used to park his fruit cart near the temple, sabzi mandi, Khureji. On the date of the incident at about 10:30-11 pm, he was standing at his fruit cart, when A3 parked his Activa scooty of white colour in front of his fruit cart. He asked A3 to park his scooty at some distance from his fruit cart. At this, an altercation had taken place between A3 and him and thereafter A3 left. He went to Khureji Chowpal (cross road) on his Activa scooty to purchase ice-cream for his son. When he was leaving on his Activa scooty from the ice-cream shop, someone hit him on his head from behind and he became unconscious. ("Aankhon ke saamne andhera chaa gya"). When he regained consciousness, he found himself being taken by his brother Talib (PW4) to the hospital for treatment. The police came to the hospital. However, they did not make any inquiries. They only obtained his signature on a written paper, the contents of which he is unaware. PW2 further deposed that he has not told the name of the assailants to the police.

15.1. At this juncture, the Prosecutor sought permission of the Court to "cross-examine" PW2, which was allowed. On being further examined by the Prosecutor,

he denied having given any statement to the police.

15.2. PW2, in cross-examination, deposed that the three accused persons present in the court had not caused any injury to him on the date of the incident.

16. PW5 deposed that on 12.04.2012 at about 11:30 PM, while he was having dinner in a hotel at Chaupal, Khureji Khas, Delhi, a quarrel took place between Galib (PW2) and Janu (A3) along with his two brothers, namely, Tasleem (A1) and Kale (A2). He did not see who had beaten PW2. However, he noticed that Galib (PW2) was bleeding from his head and that a quarrel was going on between Galib (PW2) and the said persons. He did not see anything in the hands of Janu (A3) or his brothers (A1 and A2). At this stage, on the request of the Prosecutor, permission was granted by the trial court to "cross-examine" PW5, as he had resiled from certain portions of his earlier statement. On further examination by the Prosecutor, PW5 deposed that it was possible that the incident had taken place on 04.04.2012. He denied that Kale (A2) was carrying an iron rod or Janu (A3) a brick or Tasleem (A1) a danda, or that they had beaten Galib (PW2) with the same.

17. PW3, the mother of PW2, admitted that she had not witnessed the incident.

18. Apart from PW2, the injured and PW5, the alleged occurrence witness, there is no other witness who is supposed to have witnessed the incident. It is true that the medical evidence shows that PW2 had sustained injuries on the said day. But there is no evidence regarding the persons who had caused the injuries. In such circumstances, the trial court went wrong in relying on the materials on record to convict the accused persons, especially when neither PW2 nor PW5 supported the prosecution case.

19. The conviction of the appellants for the offence punishable under Section 308 read with Section 34 IPC is therefore unsustainable in law and liable to be set aside.

20. In the result, the appeal is allowed. The appellants/accused persons are acquitted under Section 235(1) Cr.P.C. for the offence punishable under Section 308 read with Section 34 IPC. They are set at liberty and their bail bonds shall stand cancelled.

21. Application(s), if any, pending, shall stand closed.