Raj Kumar @ Pradeep vs State

Raj Kumar @ Pradeep vs State

SooperKanoon Citation : sooperkanoon.com/1255736

Court : Delhi

Decided On : May-25-2026

Judge : Hon'Ble Ms. Justice Chandrasekharan Sudha

Appeal No. : CRL.A./35/2016

Appellant : Raj Kumar @ Pradeep

Respondent : STATE

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 19.05.2026

Judgment pronounced on: 25.05.2026

+ CRL.A. 35/2016

RAJ KUMAR @ PRADEEP .....Appellant Through: Mr. S.S. Ahluwalia and Ms. Rimpy Rohilla Advocates

versus

STATE .....Respondent Through: Mr. Utkarsh, APP for State

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, accused no. 1 (A1) in SC No. 33/2014 on the file of the Additional Sessions Judge-II (North-West), Rohini Courts, Delhi, assails the judgment and order on sentence dated 26.09.2015 as per which he has been convicted and sentenced for the offences punishable under Sections 307, 326 read with Section 34 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 23.03.2013 at about 10:30 p.m., at U.T. Block Chowk, Mangol Puri, Delhi, both the accused persons, namely, A1 and A2, caused grievous injuries toPW8 and PW9 with a sharp-edged weapon on their faces and

other body parts with such intention or knowledge and under such circumstances that, had death been caused, they would have been guilty of murder. Hence, as per the charge-sheet/final report, the accused persons are alleged to have committed the offences punishable under Sections 307 read with 34 IPC.

3. On the basis of Ext.PW7/A FIS/FIR of PW12, given on 24.03.2013, Crime no. 199/2019, Mangol Puri Police Station, that is, Ext.PW2/B FIR was registered by PW2, Head Constable. PW10, Assistant Sub Inspector (ASI) was entrusted with the investigation of the case. On completion of the investigation into the crime, the charge-sheet/final report was filed alleging the commission of the offences punishable under the aforementioned sections. Although A2 was chargesheeted, he appears to have absconded and hence from the records, it is seen that vide order

dated 23.05.2014, he was declared a proclaimed offender, which was apparently before the case was committed to the Court of Session.

4. When A1 was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. Vide order dated 23.05.2014, the matter was committed under Section 209 Cr.PC to the Sessions Court concerned for trial.

5. After hearing both sides, the trial court, vide order dated 16.07.2014, framed a Charge under Section 307 read with Section 34 IPC, which was read over and explained to him, to which he pleaded not guilty.

6. On behalf of the prosecution, PWs. 1 to 13were examined, and Exts. PW1/1, PW1/A-B, PW2/1, PW2/A-C, PW3/1, PW3/A,PW4/1, PW5/A-B, PW6/A-D, PW7/A-C, PW10/A,

PW10/A1 and PW11/A-B were marked in support of the case.

7. After the close of the prosecution evidence, A1 was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. A1 denied all those circumstances and maintained their innocence. A1 claimed that he had been falsely implicated in the case by PW12, who is his Tau, due to a previous monetary dispute. He did not cause any injury to anyone.

8. After questioning A1 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, A1 has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him.

9. DW1 and DW2 were examined on behalf of the accused. No documentary evidence was adduced by the accused.

10. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, vide the impugned judgement dated 26.09.2015, found A1 guilty of the offence punishable under Sections 307, 326 read with Section 34 IPC. Vide order on sentence dated 26.09.2015, A1 has been sentenced to rigorous imprisonment for a period of seven years, fine of 10,000/- and in default of payment of fine, to simple imprisonment of three months for offence punishable under

Section 307 read with Section 34 IPC and rigorous imprisonment for a period of three years, fine of 10,000/- and in default of payment of fine, to simple imprisonment of three months Section 326 read with Section 34 IPC. Aggrieved, A1 has preferred this appeal.

11. The learned counsel for the appellant/A1 submitted that the impugned judgment is vitiated by a complete misappreciation

of the evidence. PW12 falsely implicated A1 in order to avoid repayment of 1.5 lakhs, borrowed by the formers late son. PW8 and PW9, daughter and son-in-law of PW12 are interested witnesses, as the loan was extended to PW8, and she was not willing to repay the amount. It was submitted that no recovery was effected from A1, and no independent witness had been examined, even though the incident is alleged to have taken place in a public

place. The defence evidence has not been properly appreciated by the trial court. Moreover, it was submitted that the case against A2 has been quashed by this Court and that the attempt of PW8, PW9 and PW12 is only to extort money from the appellant/accused. The case against A2 was settled on payment of money, which would again substantiate the case of the appellant/accused that the actual dispute is a monetary one. On these grounds, the learned counsel canvassed for an acquittal of the appellant/A1.

12. Per contra, the learned Additional Public Prosecutor supported the impugned judgment and submitted that the

consistent testimony of PW12, PW8 and PW9 clearly establishes the prosecution case. There is no infirmity in the impugned judgment calling for an interference by this Court.

13. Heard both sides and perused the records.

14. The only point that arises for consideration in the

present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this court.

15. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW7/A FIS/FIR of PW12 reads thus:- On 23.03.2013 at about 10:30 p.m., he was returning home after closing his rehri. At that time, Pradeep (A1), son of his younger brother, and Johny (A2), his nephew (sisters son) approached him. Pradeep (A1) told him that his son late Naresh, had taken 1.5 lakhs as loan from the former and demanded the return of the amount, while threatening him that otherwise, the former would get his house sold. He replied that his son Naresh died in an accident the previous year.

On hearing this, Pradeep (A1) became aggressive, slapped him, and kicked him on his stomach. He ran from there to the house of

his daughter, Anu (PW8), at U-578 and called out to her. Anu (PW8), and his son-in-law, Jagdish (PW9) came out of their house. His daughter (PW8) asked Pradeep (A1) and Johny (A2) as to why they had beaten her father. He challenged Pradeep (A1) and Johny (A2) thus: . Pradeep (A1) attacked his daughter, Anu (PW8), on her face with a sharp-edged object. When his son-in-law Jagdish (PW9) tried to save PW8, Johny (A2) caught hold of him, and Pradeep (A1) attacked Jagdish (PW9) with a sharp object on his face and other parts of the body. When he shouted for help - , both of the accused persons fled from the spot. He informed the police. All three of them went to Sanjay Gandhi Hospital. Since he had not sustained any visible or major injuries, he did not get his medical examination done.

Pradeep (A1) and Johny (A2) had caused injuries to his son-in-law

(PW9) and daughter (PW8) by attacking them with a sharp object.

Legal action should be taken against them.

16. PW12 when examined before the court deposed that on 23.03.2013 at about 10:30 p.m., while he was returning home on foot, Pradeep (A1), who is his nephew, and Johny, his sisters son, approached him. Pradeep (A1) told him that his son, late Naresh, had taken 1.5 lakhs and demanded the money back. He told A1 that his son, Naresh, had already passed away in an accident. Pradeep (A1) then became aggressive, slapped and kicked him on the stomach. He ran to his daughter Anu's (PW8) house at U-578, and called out to the latter and her husband Jagdish (PW9). PW8 and PW9 followed him to UT Block Chowk, Mangolpuri, where Pradeep (A1) and Johny (A2) were present. His daughter Anu (PW8) asked Pradeep (A1) as to why the latter had beaten her father. Upon this, Pradeep (A1) slashed the face of his daughter

Anu (PW8) with a sharp-edged object. When her husband Jagdish (PW9) tried to save her, Johny (A2) caught hold of him, and

Pradeep (A1) also slashed his face and other parts of his body. A1 gave multiple slashes to both PW8 and PW9. He raised an alarm by shouting bacho, bacho. Finding no other option, both the accused, Pradeep (A1) and Johny (A2), fled from the spot. He called the police. Before the PCR reached the spot, he, along with his daughter Anu (PW8) and his son-in-law Jagdish (PW10), left for SGM Hospital. As he had not sustained any major injuries, he was not examined. However, his daughter Anu (PW8) and his son-in-law Jagdish (PW9) had suffered serious injuries and were given treatment at the hospital. The police met him at the hospital, where his Ext. PW7/A statement was recorded. He had shown the scene of crime to the Investigating Officer (IO), who prepared Ext.

PW7/C site plan.

16.1 PW12 in his cross-examination deposed that no money transaction had taken place between him and Pradeep (A1). He admitted that he, along with his daughter Anu (PW8) and his son-in-law Jagdish (PW9), had sold the plot of his deceased son,

Naresh, in order to clear Nareshs debts. He denied all suggestions of money transactions between his late son Naresh and A1. PW12 denied the suggestion that on the date of the incident, a dispute had occurred between his daughter and son-in-law with some other person on the issue of running a cyber cafe, and that in the said incident injuries had been caused to the latter.

17. PW8, the daughter of PW12, deposed that on 23.03.2013, her father Mehar Chand (PW12) had come to her house at about 10:30 p.m. Her father started calling out her and her

husband, namely, Jagdish (PW9). They both came to UT block Chowk, where her father (PW12) informed them that he had been beaten by Pradeep (A1). She, along with PW9 and PW12 went to UT block Chowk where Pradeep (A1) was and questioned him for having beaten her father. Her father said to A1, Ab tu maar ke dikha. Pradeep (A1) then slashed her face with a sharp-edged object, and when her husband, Jagdish (PW9), tried to save her, Johny (A2) caught hold of him, and Pradeep (A1) slashed his face

and other parts of the body with the said object. Her father raised an alarm by shouting, bachao- bachao. A1 and A2 then ran away from the spot. Her father (PW12) called the police. She, along with her father (PW12) and her husband (PW9), went to Sanjay Gandhi Hospital for treatment. PW8 identified Raj Kumar @ Pradeep (A1) before the court.

17.1. PW8, in her cross-examination, denied the suggestion that on the date of the incident, i.e., 23.03.2013, a quarrel had taken place between one of her customers and her husband (PW9) in her cyber cafe, and that the said person had threatened both of them with dire consequences. She denied the suggestion that the person who had quarrelled with them had physically assaulted her and her husband (PW9) with a sharp object. PW8 admitted that Raj Kumar @ Pradeep (A1) is her cousin brother and that Naresh is her elder brother. Naresh, who is no more, had good relations with Raj Kumar @ Pradeep (A1). She denied the suggestion that when she was in dire need of money, Naresh had extended financial help

to her or that when she asked Naresh for money, he had sought help from Raj Kumar @ Pradeep (A1), and that it was the latter who had given a pair of ear rings/jhumkies to be pledged with

Muthoot Finance and that the money obtained had been handed over to her. She denied the suggestion that when Raj Kumar @ Pradeep (A1) asked her to return the loan amount, as he wanted to get his earrings released, she had refused his request. Several neighbours had gathered when the quarrel took place. She admitted that she had not witnessed the initial incident of quarrel between her father and A1. She denied the suggestion that she and her husband had assaulted Raj Kumar @ Pradeep (A1) and that to create a defence for themselves, they had called the police.

18. PW9, the husband of PW8 and the son-in-law of PW12, fully supported the prosecution case.

19. PW11, Dr. Manoj Dhingra, the in-charge, Mortuary, Sanjay Gandhi Memorial Hospital, Delhi, deposed that on 18.05.2013, he received Ext. PW11/A MLC No. 4892 of PW8 and

Ext. PW11/B MLC No. 4981 of PW9 for his expert opinion. After going through the MLC and examining PW8 and PW9, he had opined the nature of the injuries to be grievous. PW11 identified the endorsements made and signature of Dr. Brijesh, the Chief Medical Officer (CMO) who had initially examined PW8 and PW9. Dr. Brijesh had referred PW8 and PW9 to the Forensic Department to assess the nature of their injuries due to disfiguration of the face.

19.1. PW11, in his cross-examination, admitted that at no point of time was any weapon of offence shown to him. He initially deposed that the injuries seen could be caused by a kara as it has sharp edges. He later deposed that as the injury was long, extending from the neck to the face, the possibility was that the same was caused by something which was being held by the

assailant in his hand. The injuries were not caused by a fall on a sharp object. PW11 was unable to say whether the injuries were fresh or if they had been caused earlier.

20. PW13, Dr. Brijesh, Chief Medical Officer (CMO), SGM Hospital, Mangolpuri, Delhi deposed that on 24.03.2013, Dr. Priyash was working as a Junior Resident (JR) under his supervision. On that day, Dr. Priyash examined the patient, Annu (PW8), aged about 30 years, and had issued Ext. PW11/A MLC. The following injuries were noted:- a lacerated wound over the nasal septum measuring 03 cm 0.5 cm 0.5 cm; a contused lacerated wound (CLW) over the lower lip measuring 1 cm 0.5 cm 0.25 cm and an incised wound on the right cheek. On 17.05.2013 at 06:30 p.m., PW8 was again examined and referred to the Forensic Department to determine the nature of the injury in view

of the disfiguration of her face. On the same day, Dr. Priyash had also examined PW9 and had issued Ext.PW11/B MLC. There was a sharp incised wound on the left side of the jaw, extending from the angle of the mouth to the ear lobule, measuring 07 cm 0.5 cm 0.25 cm. The patient was again examined on 17.05.2013 at about 06:30 p.m. and was referred to the Forensic Department for the

determination of the nature of the injury in lieu of the disfiguration of his face. He is acquainted with the handwriting and signature of Dr. Priyash, as he had seen the latter writing and signing during the course of the discharge their official duties.

21. PW13 in his cross-examination, deposed that when he examined the patient, he found the injuries to be fresh and not old.

22. I also make a brief reference to the testimony of the defence witnesses. DW1 deposed that Raj Kumar (A1) is the son

of his mama, and the injured, Annu (PW8), is also the daughter of his mama. Raj Kumar (A1) had given 1,50,000/- to Annu (PW8) at the time of the MCD Elections in April 2011. Since Annu (PW8) was not returning the said amount, there was a dispute pending between Raj Kumar (A1) and Annu (PW8) on account of this len-den. During this period, Naresh, son of his mama (PW12) passed away. Naresh had asked Raj Kumar (A1) to give the money to Annu (PW8). After Nareshs death, Annu (PW8) became dishonest and claimed that since Naresh was dead, no money was

due. According to DW1, the response of PW8 to the demand for return of money by A1 was:- usne kaha tha ki mere paas aane ke jaroorat nahin hai, mere paas koyee paisa nahin hai, paisa Naresh se le le. Annu (PW8) also used to threaten anyone who intervened in the matter. PW9 used to say that he would ensure that anybody

who demanded the money back would be sent to jail.

22.1 DW1 in his cross-examination deposed that Raj Kumar (A1) in his presence had given the money to Annu (PW8) on the request of Naresh. There is no written document to evidence the said transaction. DW1 denied the suggestion that he was deposing falsely in order to save Raj Kumar (A1).

23. DW2 deposed that she used to go to a cyber cafe located at U Block, Mangol Puri. On 23.03.2013, at about 05:00 p.m.-06:00 p.m., when she was at the cyber cafe, 05 to 06 boys came and began fighting with the owner of the cyber cafe. After a while, all of them left, and she and the others also left the

premises. At that time, she had not seen Raj Kumar (A1) inside the cyber cafe.

24. One of the main arguments advanced by the learned counsel for the appellant/accused is that the case is a false one and

that the attempt of PW8, PW9 and PW12 is only to extort money from the appellant/accused. In support of the argument, reference was made to the order of this Court dated 05.01.2018 in CRL.M.C. emanating there from have been quashed qua A2. It was pointed out that the order reveals that the matter was settled between A2 and PW8, PW9 and PW12 by the former giving them money. Therefore, the argument advanced is that the dispute between the parties is actually a monetary one and not as testified by the prosecution witnesses and this itself is sufficient to disbelieve the testimony on record.

25. The incident in this case is alleged to have taken place on 23.03.2013 at 22:30 hours. Crime No. 199/2013, that is, Ext.

PW2/B FIR was registered within hours, that is, on 24.03.2013 at 02:00 hours alleging the commission of offence punishable under

Section 324 read with Section 34 IPC. On completion of investigation, the final report/chargesheet alleging commission of the offence punishable under Section 307 read with Section 34 IPC by A1 and A2 was submitted before the jurisdictional magistrate on 09.04.2014. As per order dated 23.05.2014, A2 was declared a proclaimed offender. After the case was committed, trial was conducted and the trial court by the impugned judgment dated 26.09.2025 convicted A1, pursuant to which the present appeal was filed in the year 2016. Apparently, CRL.M.C. 51/2018 was filed by A2 before this Court much after the impugned judgment in the case on hand. The order dated 05.01.2018 in the aforesaid CRL.M.C. reads thus:-

It is submitted that petitioner and respondent nos. 2 to 4 are related to each other. Petitioner is nephew of respondent no.2; whereas respondent no. 3 is daughter of respondent no.2 and wife of respondent no. 4. A quarrel took place between them on some

trivial issue which led to registration of FIR No. 199/2013 under Sections 324/34 IPC registered at police station Mangol Puri, on the complaint of respondent no.2. In the said incident, respondent nos. 3 and 4 sustained injuries. It is further submitted that with the intervention of their elders, petitioner and respondent nos. 2 to 4 have settled their disputes amicably vide Memorandum of Understanding dated 8th June, 2017. Petitioner has paid 1 lac to the respondent nos. 3 and 4 in order to compensate them towards the medical treatment received by them. Respondent nos. 2 to 4 are present in Court along with their counsel and have been identified by ASI Ravinder of police station Mangol Puri. These respondents submit that they have settled the matter of their own free will and without any undue force, pressure or coercion and they have no objection in quashing of the FIR. Respondent nos. 3 and 4 also admit having received settled amount of 1 lac from the petitioner. Keeping in mind that a settlement has been arrived at between the petitioners and respondent nos. 2 to 4 voluntarily and these respondents have no objection in quashing of the FIR, in the interest of justice, aforesaid FIR and the consequent proceedings emanating therefrom are quashed. (Emphasis Supplied)

26. The case of the petitioner in CRL.M.C. 51/2018, who is

none other than A2 in the crime, approached this Court for

quashing the case alleging that the offence was under Section 324

read with Section 34 IPC, which is apparently a false statement. It

is true that crime was initially registered alleging commission of

offence punishable under Section 324 read with Section 34 IPC. But the police on completion of investigation submitted the charge sheet alleging commission of the offence punishable under Section 307 read with Section 34 IPC. A competent court of law took congnizance; conducted trial and on the basis of the evidence on record, concluded that the offence punishable under Section 307 read with Section 34 IPC was made out and proceeded to convict A1. The impugned judgment dated 26.09.2015 is apparently much before the CRL.M.C. 51/2018 was moved by A2 to quash the FIR against him. It is quite disturbing to note that the IO or the SHO concerned never brought it to the notice of the Court that A1 had already been convicted. As A2 had been declared a proclaimed offender, non-bailable warrants would certainly have been pending against him. But neither A2 (the petitioner in CRL.M.C. 51/2018)

nor the officer concerned, who is specifically referred to in the

aforesaid order thought it fit to bring it to the notice of the Court about the impugned judgment or the fact that A2 had been declared a proclaimed offender in the case or the offence alleged is not under Section 324 IPC but under Section 307 IPC. A reading of the order also gives the impression that it was never brought to the notice of the Court that the trial against A1 had ended in a conviction for the offence punishable under Section 307 read with Section 34 IPC. Therefore, A2 apparently seems to have misled the Court and obtained the aforesaid order in the CRL.M.C. 51/2018 on the ground that the case involved only the commission of a minor offence.

27. Further, on going through the aforesaid order, it is seen that A2 paid an amount of 1 lac to respondents no. 3 and 4 in the

said case, who appear to be PW8 and PW9 in this case to compensate them towards the medical treatment undergone by them. If no such incident as alleged by the prosecution witnesses had been taken place, there was absolutely no need for A2 to have

paid money to the injured witnesses to compensate them for the medical treatment. Therefore, the argument of the learned counsel for the appellant/A1 that no such incident as alleged had taken place and that it was actually only a money dispute that existed between the parties and that the attempt of the injured is only to extort money from him, does not appear true or probable.

28. I have already referred to in detail the testimony of PW8 and PW9, who are injured in this case. PW12 admits that he had not sustained any injuries in the incident. On going through the testimony of PW8 and PW9, I do not find any reason(s) to

disbelieve them. As held by the Apex Court in Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 and Jarnail Singh v. State of Punjab, (2009) 9 SCC 719, it is settled law that the testimony of injured witnesses carries great evidentiary value. The law on the point can be summarized to the effect that the testimony of injured witnesses is accorded a special status in law. This is as a consequence of the fact that the injury is an inbuilt guarantee of his

presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the testimony of injured witnesses should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. No material contradictions or inconsistencies have been brought out in the

testimony of PW8 or PW9 to disbelieve them.

29. It is true that the appellant (A1) has examined two witnesses to substantiate his defence version that it was only a money dispute between the parties. It is also true that DW1 supports the defence version of the appellant/accused. As far as DW2 is concerned, her testimony is to the effect that she is a customer of the cyber cafe of PW8 and PW9 and that on the date of the incident at about 05:00 - 06:00 PM, while she was at the cyber cafe, about 5 to 6 boys came and fought with the owner of the cyber cafe. According to DW2, A1 was not in the company of

the said 5 to 6 boys who had fought with the owner of the cyber cafe. The incident in the case on hand, going by the FIR took place on 23.03.2013 at 22:30 hours. The time of occurrence is not disputed by the appellant/accused. The fact that PW8 and PW9

sustained injuries is also not disputed. His defence is that he had not caused the injuries and that PW8 and PW9 were injured by somebody else. The accused never has a case that initially some quarrel had taken place in the cafe of PW8 at about 05:00-06:00 PM and that the said persons had come back to the scene of occurrence on the same day at 22:30 hours and assaulted PW8 and PW9. The appellant/accused also has no case that the injuries seen on PW8 and PW9 were caused sometime in the evening between 05:00 and 06:00 p.m. In such circumstances, the testimony of DW2 can never be believed.

30. Further, the medical evidence also corroborates the version of PW8 and PW9. In Ext. PW11/A MLC of PW8, the injuries noted are:- a lacerated wound over the nasal septum

measuring 03 cm 0.5 cm 0.5 cm; CLW (contused lacerated

wound) over the lower lip measuring 1 cm 0.5 cm 0.25 cm and an incisional wound on the right cheek. In Ext. PW11/B MLC of PW9, the injury noted is:- sharp incisional wound on left side of jaw extremely from angle of mouth to ear lobule measuring 7 cm 0.5 cm 0.25 cm.

31. PW11 and PW13, the doctors testimony also corroborate the version of PW8 and PW9. As noticed earlier, the FIR says that the incident took place on 23.03.2013 at 10:30 p.m. PW8 and PW9 are seen examined by the doctor on 24.03.2013 at 12:00 a.m. and 12:10 a.m. respectively. The injuries have been noted to be fresh also.

32. Now the question is, what is/are the offence(s) made out from the materials on record. The trial court has framed a Charge only for the offence punishable under Section 307 read with Section 34 IPC. However, the trial court, has concluded that

as far as the offence against PW8 is concerned, it is the offence

under Section 326 IPC that has been committed and as against PW9, it is the offence under Section 307 read with Section 34 IPC. The essential ingredients of an offence under Section 307 of the IPC are : (i) the death of a human being was attempted; (ii) such death was attempted to be caused by, or in consequence of the act of the accused; (iii) such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as; (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act know to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of

causing such death or injury. Section 307IPC makes it clear that to attract the said offence the victim need not suffer any kind of bodily injury. The offence to commit murder punishable under Section 307 IPC is constituted by the concurrence of mens rea

followed by actus reus, to commit an attempt to murder though its accomplishment or sufferance of any kind of bodily injury to the victim is not a sine qua non. In other words, if a man commits an act with such intention or knowledge and under such circumstances that if death had been caused, the offence would have amounted to murder or the act itself is of such a nature as would have caused death in the usual course of an event, but something beyond his control prevented that result, his act would constitute the offence punishable as an attempt to murder under Section 307 IPC. (See Amit Rana v. State of Haryana, (2024) 15

SCC 42 : 2024 SCC OnLine SC 1763)

33. The evidence on record does show the injuries are grievous as defined under Section 320 IPC. Clause Sixthly of Section 320 IPC says that if there is permanent disfiguration of the head or face, the hurt would be a grievous hurt. The medical records show that there was disfigurement of the face and hence, a grievous injury as contemplated under Section 320 IPC. However,

it is doubtful whether the materials on record make out a case of attempt to commit murder as contemplated under Section 307 IPC. Admittedly, the rival parties are close relatives. According to PW12, on the date of the incident, while he was returning home, A1 and A2 approached him and A1 demanded return of the money that his late son had borrowed from the latter. This led to a quarrel between PW12 and A1 and A1 slapping and kicking PW12. PW12

on being assaulted by A1 ran to his daughters house nearby and sought their help. Thereafter, PW8, his daughter and PW9, his son-in-law accompanied him back to the place of occurrence of the initial incident. PW12 himself admits that he challenged A1 thus:- ab maar ke dikhao. A1 then assaulted and injured PW8 and PW9 with a sharp-edged object. This Court hastens to add that it does not in any way justify the act of A1. But in the facts and circumstances, it was quite unnecessary for PW12 to have returned to the place of occurrence and challenged A1 resulting in the

subsequent incident. There does not appear to be an intention to commit murder or cause the death of the witnesses in the case.

34. It is true that the weapon of offence has not been recovered in the case on hand. However, it is well settled that recovery of the weapon used in the commission of the offence is

not a sine qua non for conviction, if the prosecution case is otherwise proved beyond reasonable doubt (See Rakesh v. State of U.P., (2021) 7 SCC 188). Further, non-examination of independent witnesses is also not fatal to the prosecution case when the testimony of injured witnesses is found to be reliable and trustworthy (See Guru Dutt Pathak vs. State of Uttar Pradesh, 2021 SCC Online SC 363).

35. Though the evidence on record does not make out a case under Section 307 IPC, the offence under Section 326 IPC is certainly made out. To attract Section 326 IPC, the prosecution must establish the following ingredients: (i) that the accused voluntarily caused hurt; (ii) that the hurt caused amounts to

grievous hurt within the meaning of Section 320 IPC; and (iii) that such grievous hurt was caused by means of any instrument for

shooting, stabbing or cutting, or by any dangerous weapon or means. The medical evidence of PW11 and PW13 establishes that PW8 and PW9 had sustained grievous injuries resulting in disfigurement of their face. It is true that no Charge under Section 326 IPC was framed by the trial court against the appellant/A1. Here it would be apposite to refer to Section 222 Cr.P.C. Section 222(1) Cr.P.C deals with a case, when a person is charged with an offence consisting of several particulars. The Section permits the Court to convict the accused of the minor offence, though he was not charged with it. Sub-section (2) deals with a similar, but slightly different situation. Under Section 222(2) Cr.P.C., when a person is charged with an offence, and facts are proved, it is reduced to a minor offence; he may be convicted of a minor offence, although he is not charged with it. The meaning of a

minor offence for the purpose of Section 222 Cr.P.C. was dealt

with by the Apex Court in S.M. Multtani v. State of Karnataka, 2001 (2) SCC 577, in which it has been held that, although the said expression is not defined in Cr.P.C, it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the Section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence, vis- a-vis the other offence.

36. Section 222(1) Cr.P.C. is attracted in this case and, therefore, no Charge has been framed under Section 326 IPC, by virtue of the said provision, the appellant/ A1 is found guilty under

Section 326 IPC.

37. In light of the aforesaid discussion, the appeal is partly allowed. The conviction and sentence of the appellant/ A1 for the offence punishable under Section 307 read with Section 34 IPC is

set aside and the appellant/ A1 is found guilty of the offence punishable under Section 326 IPC read with Section 34 IPC and hence, convicted and sentenced to undergo rigorous imprisonment for a period of 2 years and to a fine of 10,000/- and in default of payment of the fine, to simple imprisonment for 3 months.

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

CHANDRASEKHARAN SUDHA

(JUDGE)

MAY 25, 2026

kd