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

Reserved on: 09.10.2026
Pronounced on: 14.10.2026
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\+ **CRL.A. 1094/2025 & CRL.M. (BAIL) 1655/2025**

FAKRU@ FAKRUDEEN@ MENU@ MONU THROUGH PAROKAR MS MISAKINA .....Appellant

Through: Mr. Manish Kumar and Mr. Santu Kumar, Advocates.

versus

STATE OF NCT OF DELHI .....Respondents

Through: Mr. Utkarsh, APP for the State with SI Ashok Singh Chauhan, PS Nihal Vihar.

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present appeal has been preferred by the appellant, Fakru @ Fakrudeen @ Menu @ Monu, against the judgment of conviction dated 20.05.2025 and order on sentence dated 04.06.2025 passed by the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi, in Sessions Case No. 57473/2016, arising out of ***FIR No. 31/2011*** registered at Police Station Nihal Vihar. *Vide* the impugned judgment, the appellant was convicted for the offences punishable under Sections 307/353 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC").

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2. *Vide* order on sentence dated 04.06.2025, the appellant was sentenced to undergo rigorous imprisonment for a period of seven years along with a fine of Rs. 30,000/- for the offence punishable under Section 307 read with Section 34 IPC and, in default of payment of fine, to undergo simple imprisonment for three months. For the offence punishable under Section 353 read with Section 34 IPC, the appellant was sentenced to undergo rigorous imprisonment for two years along with a fine of Rs. 10,000/- and, in default of payment of fine, to undergo simple imprisonment for two months. Both sentences were directed to run concurrently.

BRIEF FACTS

3. The case of the prosecution is that on the intervening night of 29/30.01.2011, ASI Azad Singh was on patrolling duty in PCR Van along with HC Rajender Singh, Ct. Rishi Raj and Ct. Pradeep Kumar. At about 01:51 AM, information was received, that certain persons had caught cows near Kunwar Singh Nagar Nehar. Upon receiving the information, the police team proceeded towards the said location. However, no person was found present there.

4. ASI Azad Singh thereafter contacted the informer, who stated that he was present in the nearby fields and informed him that certain persons were loading cows into a white-coloured tempo near D/5 Block, Kunwar Singh Nagar, adjoining I.G. Colony. Acting upon the said information, the police team proceeded towards D/5 Block. While taking a right turn towards the said location, the police officials noticed a white-coloured TATA-407 vehicle.

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5. It is alleged that upon noticing the approaching PCR van, the driver of the TATA-407 raised an alarm and another person travelling in the vehicle exhorted him to drive into the police vehicle. According to the prosecution, the driver thereafter reversed the TATA-407, accelerated it and struck the PCR van. The driver then reversed the vehicle again and fled towards Ranhola. In the meantime, Ct. Pradeep Kumar got down from the PCR van and fired four rounds towards the tyres of the fleeing vehicle. However, the vehicle could not be apprehended.

6. Upon receipt of the information regarding the incident, SI Sugreev Singh, along with Ct. Rajesh, reached the spot, where the PCR van was found in a damaged condition. The statement of ASI Azad Singh was recorded, on the basis of which FIR No. 31/2011 was registered at Police Station Nihal Vihar under Sections 307/379/186/353/427/34 IPC. During investigation, the site plan was prepared, the PCR van was seized and the service pistol used by Ct. Pradeep Kumar was taken into possession.

7. During the course of investigation, information was received regarding the arrest of co-accused Tahir in another case. The prosecution alleges that Tahir, in his disclosure statement, admitted his involvement in the present incident and named other persons who were allegedly accompanying him. A chargesheet was thereafter filed before the competent court. The proceedings against Tahir continued separately, and he was subsequently declared a proclaimed offender *vide* order dated 13.03.2014.

8. The appellant came to be implicated in the present case during further investigation. On receiving information that the appellant was

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lodged in Ballabhgarh Jail in connection with another case, steps were taken to secure his production before the concerned Court. An application for conducting his Test Identification Parade (TIP) was moved. However, the appellant refused to participate in the TIP proceedings conducted on 22.03.2013. The alleged offending vehicle, namely the TATA-407, could not be recovered. Upon completion of further investigation, a supplementary chargesheet was filed against the appellant.

9. *Vide* order dated 16.10.2015, charges were framed against the appellant for the offences punishable under Sections 307 and 353 IPC, to which he pleaded not guilty and claimed trial.

10. In order to substantiate its case, the prosecution examined 20 witnesses. The material witnesses to the alleged occurrence are PW-5, retired SI Azad Singh, PW-6, HC Rajender Singh and PW-11, Ct. Pradeep Kumar, who were members of the police team travelling in the PCR van at the relevant time. The relevant portion of their testimonies are reproduced hereinbelow:

Witnesses	***Statement In Chief Examination***	***Statement In Cross Examination***
PW-5 SI AZAD SINGH	*…We stopped our police gypsy in front of white tempo.* ***On seeing the police gypsy the driver of tempo stated that "Saamne se hut jao nahi to jaan se maar denge". When we moved our vehicle towards the tempo the person who***	

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	were sitting on the adjoining seat of driver stated that "aaj in salo ko jaan se maar do nahi to yeh baar baar hamare kaam me aise hi badha dalte raheng'". On this the driver of the tempo took his tempo backward and again while driving the tempo speedily took forward the same and hit our gypsy. Due to which our gypsy went backward and turned. *XXX* *…I can identify the accused persons if shown to me.* ***At this stage, witness has correctly identified the accused, who is present in court today and stated that he is the same person, who was sitting on the adjoining seat of driver in driver cabin near the window and had threatened us***. *There were two more person sitting in between driver and the*	

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	accused, who is present in court today.	
PW- 6- HC RAJENDER SINGH	*…I saw there were 3-4 persons in the cabin of the driver including driver. Again said there were four person in the cabin including driver.* ***The accused, who is present in court today was sitting in window side and there were two more persons in between him and driver. Accused threatened us "saamne se hut jao nahi to mar denge tum hamare kam me rukawat dalte ho". The driver of the tempo took back his tempo and again speedily moved forward and hit our gypsy with intend to kill us.*** *Thereafter the driver of the tempo took back the same and thereafter he took tempo speedily from the side of Ranhola. Ct.Pradeep was also tried to stop the tempo and he fired upon the tyre of the tempo four times for getting stop*	*On that date I was on duty from 8 PM to 8 AM. I never took liquor. I am a driver. The time of incident was about 1.32/1.45 AM midnight. We reached at the spot where tempo hit our gypsy within 5-7 minutes from where IO made call to the informant. We gave signal to the tempo of Tata 407 at the distance of about 20 to 25 ft. Tempo hit our gypsy on the speed of about 40/45 km.per hour. At that time our gypsy was moving on the speed of about 5/10 km.per hour. It is wrong to suggest that no such incident had taken place. It is correct that no one from us sustained injuries due to the impact. It is wrong to suggest that accused person has been falsely implicated in this case or that our gypsy hit against a wall. It is wrong to suggest that to save ourselves we made false story. It is*

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	the same but the driver went towards Ranhola speedily with tempo, his associates and cows. I tried to chase the tempo on my PCR van but my van could not move due to the impact caused by the accused with the tempo.	*correct that it was a winter season. It is wrong to suggest that there was fog on the road. It is wrong to suggest that we all the police officials had taken liquor.*
PW- 11-CT. PARDEEP KUMAR	*…While we reached near D-5 turned right side, we saw one white tempo was coming from our opposite side.* ***On seeing the same, the driver of the PCR tried to stop the said tempo by giving indication but the driver of tempo took back the said tempo and then forward the same tempo speedily and hit our gypsy from left side*** *and thereafter he took the tempo towards Ranhola.* ***I get down from the gypsy and fired upon the tyres of tempo four rounds with my service rivalvar but the driver of the tempo did not stop the same and took the tempo***	*…We were total four police officials in PCR Van including me.* ***There were about four persons in the cabin of driver including driver and two/three persons on back side of tempo.*** *It is correct that one gunman, who was the police official, was with us. It is also correct that I was carrying govt. pistol on that day. I do not remember if the Incharge of PCR Van was having arms with him or not. I had only fired upon the tyre of the tempo. It is correct that none of the accused was apprehended at the spot. I had fired four rounds. I did not lift the empty cases of cartridges from the*

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	towards *Ranhola. My said rounds got missed and did not hit the tyres. IO of this case came at the spot and he seized our gypsy and he lifted three empty cases of cartridges from the spot.*	*spot. I do not know if the empty cases of cartridges and my pistol were sent to FSL or not.*

11. Upon conclusion of the trial, the learned Trial Court, *vide* judgment dated 20.05.2025, held the appellant guilty of the offences punishable under Sections 307/353 read with Section 34 IPC. The appellant was thereafter sentenced *vide* order dated 04.06.2025, as noted hereinabove. Aggrieved by the judgment of conviction and order on sentence, the appellant has preferred the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

12. Learned counsel appearing on behalf of the appellant submits that the alleged incident occurred on 30.01.2011, whereas co-accused Tahir was apprehended only after a considerable lapse of time, in August 2011, in connection with another case. The appellant was subsequently implicated in the present FIR on the basis of the disclosure statement attributed to the said co-accused. Learned counsel contends that no independent or reliable evidence has been brought on record to connect the appellant with the alleged occurrence.

13. Learned counsel further submits that although four police officials were admittedly travelling in the PCR van at the relevant time, the

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prosecution examined only three of them as eyewitnesses, namely PW-5, retired SI Azad Singh, PW-6, HC Rajender Singh and PW-11, Ct. Pradeep Kumar. The fourth police official, Ct. Rishi Raj, who was also present in the vehicle, was not examined. It is contended that the prosecution has failed to furnish any satisfactory explanation for withholding his testimony.

14. It is further contended that the testimonies of the three eyewitnesses suffer from material discrepancies, particularly regarding the identity and position of the appellant in the tempo and the words allegedly spoken immediately before the collision. Learned counsel submits that PW-5 attributed an exhortation to the person allegedly sitting beside the driver, whereas PW-6 attributed a different threat to the appellant. PW-11, on the other hand, did not attribute any such exhortation or threat to the appellant. It is further pointed out that the witnesses described the appellant as sitting near the window, with two other persons between him and the driver. According to learned counsel, these inconsistencies create serious doubt regarding the identification of the appellant and the precise role attributed to him.

15. Learned counsel submits that the manner in which the alleged collision occurred does not establish the intention or knowledge necessary to constitute an offence punishable under Section 307 IPC. It is argued that, even according to the prosecution, the tempo struck the PCR van only once and thereafter left the spot. Attention is drawn to the testimony of PW-6, who stated during cross-examination that the tempo was travelling at a speed of approximately 40–45 km/h, whereas the PCR van was

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moving at approximately 5–10 km/h. It is contended that these circumstances do not establish any premeditated attempt to cause the death of the police officials.

16. It is further submitted that none of the police officials travelling in the PCR van sustained any injury in the alleged collision nor was any medical examination of the police officials conducted. Learned counsel contends that the absence of injuries, when considered with the manner of the alleged collision and the discrepancies in the ocular evidence, renders the prosecution allegation of an attempt to commit murder doubtful.

17. Learned counsel also questions the reliability of the identification of the occupants of the tempo. It is submitted that the alleged occurrence took place during the intervening night of 29/30.01.2011, in the winter season, when visibility was allegedly affected by fog. It is contended that the prosecution witnesses could not have had a sufficient opportunity to observe and identify the occupants of the moving tempo with certainty. Learned counsel further relies upon the weather report, which indicated shallow fog at the relevant time. It is argued that the testimony denying the presence of fog is therefore unreliable.

18. It is further submitted that the person who initially informed the police regarding the alleged loading or theft of cows was neither examined during trial nor produced as a prosecution witness. Learned counsel contends that the prosecution has failed to establish the circumstances in which the police team proceeded to intercept the tempo. It is argued that an incident initially reported as one involving the alleged theft of cows was subsequently projected as an attempt to commit murder, without

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sufficient evidence to establish the ingredients of Section 307 IPC.

19. Learned counsel submits that the prosecution case rests substantially upon the testimonies of police officials, which, according to the appellant, are inconsistent on material particulars and have not been satisfactorily corroborated by independent evidence. It is further contended that the alleged offending tempo was never recovered and that the absence of medical evidence or injuries assumes significance in the facts of the present case.

20. In support of his submissions, learned counsel places reliance upon the judgment of this Court in ***Shyam Sunder v. State (NCT of Delhi) 2924:DHC:10023***, to contend that the applicability of Section 307 IPC must be determined upon consideration of the nature of the act, the surrounding circumstances and the intention or knowledge attributable to the accused. It is submitted that, in the present case, the prosecution has failed to establish the requisite intention or knowledge to sustain the conviction under Section 307 IPC.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

21. *Per contra*, learned APP appearing on behalf of the State submits that the collision between the offending tempo and the PCR van stands established from the evidence on record. It is pointed out that the damaged PCR van was seized by the Investigating Officer vide seizure memo Ex. PW-5/C. Further, the mechanical inspection report, Ex. PW-10/A, records fresh damage to the PCR van, particularly on its front portion, thereby corroborating the testimonies of the eyewitnesses regarding the collision.

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It is submitted that the said mechanical inspection report has not been disputed by the appellant.

22. It is further submitted that PW-11, Ct. Pradeep Kumar, categorically deposed that he fired four rounds towards the tyres of the offending tempo in an attempt to stop it from fleeing. The recovery of three empty cartridge cases from the spot, which were seized during investigation, lends further corroboration to the prosecution version.

23. Learned APP further submits that the appellant was duly identified before the learned Trial Court by the material eyewitnesses, particularly PW-5, retired SI Azad Singh and PW-6, HC Rajender Singh. It is contended that the discrepancies pointed out by learned counsel for the appellant are minor in nature and do not affect the substratum of the prosecution case. The material witnesses have consistently deposed regarding the interception of the tempo, the threat extended to the police officials and the subsequent collision with the PCR van.

24. Learned APP submits that the absence of injuries upon the police officials does not, by itself, exclude the applicability of Section 307 IPC. It is contended that the commission of an offence under the said provision does not necessarily require the infliction of bodily injury and that the requisite intention or knowledge may be gathered from the nature of the act and the surrounding circumstances. In the present case, the offending tempo was allegedly driven into the PCR van after threats had been extended to the police officials, which, according to the prosecution, sufficiently establishes the requisite intention or knowledge.

25. Learned APP further submits that the charges framed against the

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appellant were never challenged by him and that the appellant duly faced trial in respect of the offences alleged against him.

ANALYSIS AND FINDINGS

26. This Court has heard learned counsel for the parties and perused the material available on record.

27. The principal question which arises for consideration is whether the prosecution has established the involvement of the appellant in the alleged incident and whether the acts attributed to him satisfy the ingredients of Sections 307 and 353 read with Section 34 IPC.

28. The prosecution case principally rests upon the testimonies of PW-5, retired SI Azad Singh, PW-6, HC Rajender Singh and PW-11, Ct. Pradeep Kumar. PW-5 stated that when the police team attempted to stop the tempo, its driver threatened the officials and another occupant exhorted him to kill them. He further stated that the driver reversed the tempo and drove it forward, striking the PCR van. PW-6, who was driving the PCR van, gave a similar statement and stated that the impact prevented him from pursuing the fleeing vehicle. PW-11 in his statement stated that the tempo was reversed before being driven into the left side of the PCR van. Thus, notwithstanding certain differences in their narration, the three witnesses have described substantially the same sequence of events.

29. Their account of the collision is supported by the seizure of the damaged PCR van vide Ex. PW-5/C and the mechanical inspection report, Ex. PW-10/A, which records fresh damage to the vehicle. PW-11 in his statement further stated that he fired four rounds towards the tyres of the fleeing tempo. Three empty cartridge cases were recovered from the spot

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vide Ex. PW-5/B.

30. Learned counsel for the appellant has placed emphasis on the differences in the words attributed to the appellant by PW-5 and PW-6 in their respective statements. PW-5 spoke of an exhortation to kill the police officials, whereas PW-6 attributed a threat to the appellant to move aside or face death. PW-11 did not refer to any such threat. These differences must be considered, but they cannot be examined in isolation from the rest of the evidence.

31. In ***Leela Ram v. State of Haryana, (1999) 9 SCC 525***, the Supreme Court held that the testimony of a witness must be appreciated as a whole and that discrepancies which do not affect the core of the prosecution case should not ordinarily result in rejection of the entire evidence. Applying the said principle, this Court finds that the variations in the precise words spoken do not materially affect the evidence regarding the interception of the tempo and the collision which followed. The Supreme Court in the aforesaid judgement held as under:

> ***9.*** *Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses.* ***There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases.***

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Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. *Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] . In para 10 of the Report, this Court observed: (SCC pp. 514-15):*

> *"10.* ***While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole****. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on*

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> *the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."*
>
> ***(Emphasis Supplied)***

32. As regards identification, PW-5 and PW-6 identified the appellant before the learned Trial Court as an occupant of the driver's cabin. Both described him as seated near the window, with two persons between him and the driver. The reference by PW-5 to the person sitting on the adjoining seat of the driver must be read in the context of his subsequent description of the seating arrangement. The record also reflects that the appellant refused to participate in the Test Identification Parade conducted on 22.03.2013. Such refusal is not, by itself a proof of identity, but is a relevant circumstance when considered with the evidence of identification given during trial.

33. The argument that the witnesses are police officials does not furnish a sufficient ground to reject their evidence. The law is well settled that there is no absolute rule that police officers cannot be cited as witnesses or that their depositions should be treated with suspect. However, if the Court has good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of the incident. Reference can be made in this regard to the judgement of the Supreme court in ***State (NCT of Delhi) v. Sunil, (2001) 1 SCC 652.***

34. Here, PW-5 and PW-6 were travelling in the PCR van, while PW-

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11 was present during the collision and the subsequent firing. Their presence at the spot is supported by the duty-related record and the investigation. The non-examination of Ct. Rishi Raj, the fourth member of the police team, does not necessarily undermine the evidence of the witnesses who were examined.

35. Equally, the non-examination of the person who initially informed the police about the alleged loading of cows is not decisive. That information explains why the police team proceeded towards D-5 Block. The offence for which the appellant was convicted concerns the subsequent collision with the PCR van, an occurrence to which the police officials themselves were witnesses. The offending tempo could not be recovered, but its non-recovery cannot automatically displace the evidence regarding the incident.

36. Regarding to the applicability of Section 307 IPC. In ***State of M.P. v. Kanha (supra)***, the Supreme Court explained that the absence of a bodily injury capable of causing death does not, by itself, exclude an offence under Section 307 IPC. The determinative consideration is the intention or knowledge accompanying the act, which may be inferred from the surrounding circumstances. Therefore, the contention that none of the police officials sustained injuries cannot, by itself, justify setting aside the conviction.

37. In the present case, the evidence is not confined to an accidental or unexplained collision. PW-5 and PW-6 have spoken of threats immediately preceding the incident. The driver did not merely continue driving when signaled to stop, he first reversed the tempo and thereafter

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accelerated towards the PCR van. These circumstances, considered together, support the finding that the vehicle was deliberately driven into the police van. The fact that the collision occurred only once does not necessarily establish the absence of the requisite intention or knowledge, nor does Section 307 IPC require proof of prior planning.

38. Having considered the evidence in its entirety, this Court finds that the discrepancies highlighted by learned counsel for the appellant do not create a reasonable doubt sufficient to displace the findings returned by the learned Trial Court. The testimonies of PW-5 and PW-6 regarding the appellant's participation, read with the evidence of PW-11 and the documentary material concerning the collision, provide a sufficient basis for sustaining the conviction. No ground for interference with the impugned judgment of conviction dated 20.05.2025 and order on sentence dated 04.06.2025 is made out.

CONCLUSION

39. Accordingly, the present appeal stands dismissed. The judgment of conviction dated 20.05.2025 and order on sentence dated 04.06.2025 passed by the learned Trial Court are hereby upheld.

40. Pending application(s), if any, also stand(s) disposed of.

41. A copy of this judgment be sent to the learned Trial Court for information and necessary compliance.

MADHU JAIN
(JUDGE)

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