

**IN THE COURT OF SHRI KAPIL GUPTA
METROPOLITAN MAGISTRATE-07, PATIALA HOUSE
COURTS, NEW DELHI DISTRICT: NEW DELHI**

FIR No. : 586/03
PS : Tilak Marg

State Vs. B. S. Arora & Anr.

J U D G M E N T

A	Case Identification Number	40006/2016
B	Name of the Complainant	Sh. Naresh Jindal
C	Name of the accused	1) Sh. B. S. Arora 2) Sh. Ajay Srivastava
D	Date of Institution	21.07.2005
E	Offence Charged	U/s 323/341/384/506/34 IPC
F	Plea of accused	Accused pleaded not guilty
G	Order Reserved on	14.09.2023
H	Date of Pronouncement	26.09.2023
I	Final Order	Accused B.S. Arora and accused Ajay Srivastava are convicted for offences punishable under Section 341/384/506(Part I)/34 IPC and accused B.S. Arora and accused Ajay Srivastava are acquitted for offence punishable under Section 323/34 IPC.

1. The complainant Sh. Naresh Jindal had filed a complaint alleging offences under Section 323/341/384/506 IPC and vide order of the Ld. Predecessor dated 22.11.2003, the present FIR was registered under Section 323/341/384/506/34 IPC against accused B.S. Arora (hereinafter referred to as “accused no. 1”) and Ajay Srivastava (hereinafter referred to as “accused no. 2”). Brief facts of the case as alleged by the prosecution are that on 01.09.2003, the complainant and accused no. 2 alongwith 4 other persons were present in the court of Sh. Babu Lal, then Ld. ASJ in Patiala House Courts as they were facing trial in such court. It is alleged that at about 11:30 AM when the matter got called out, all accused appeared before such court and were asked by the court to again appear in afternoon and after coming out of the courtroom, complainant and accused no. 2 went to the chamber of their counsel who is the accused no. 1 in the present case, at Chamber no. 40, Patiala House Court. It is further alleged that after some discussion, complainant asked accused no. 2 to return his cheque for the sum of Rs. 80,000/- which was given to him for the purpose of work related to gas agency on an earlier occasion, however, accused no. 2 got annoyed and caught him and accused no. 1 gave beatings, slaps and blows to the complainant. It is also alleged that the complainant was threatened of being further assaulted and the door of the chamber was bolted from the inside and the complainant was made to sign on a pronote which was filled by accused no. 2 and his signatures were also obtained on two blank papers by accused no. 1 and only thereafter, the complainant was allowed to leave the chamber. It is further alleged that complainant went to the court of Sh. Babu Lal, then Ld. ASJ and apprised him about the incident and was asked by the court to inform the police and thereafter, the police was telephonically informed. It is alleged that police reached in front of the court premises of Sh. Babu Lal, then Ld. ASJ where both the accused and

complainant were present and upon making inquiry, police asked the accused persons to go to the Police Station and took the complainant to RML Hospital for medical examination. It is alleged that complainant had received injuries on his face and left ear, resulting into deafness of such ear and after treatment, complainant was discharged in the evening of 02.09.2023.

2. Upon completion of investigation, final report in the form of chargesheet was forwarded to the Court for trial of both accused for commission of offence U/s 323/341/384/506/34 IPC.

3. After taking cognizance of the offences, the accused were summoned and after compliance of Section 207 CrPC and after hearing the parties concerned, charge for commission of offence under Section 323/341/384/506/34 IPC was framed upon both the accused to which they pleaded not guilty and claimed trial.

4. Both accused admitted copy of discharge summary Ex. PW2/A1 under Section 294 CrPC and the corresponding witness was dropped.

5. In order to prove its case against the accused, the prosecution examined 7 witnesses.

6. W/SI Sarita was examined as PW 1 who deposed that on 01.09.2003, she was on emergency duty and upon receiving DD no. 14A (regarding quarrel) vide Ex. PW-1/A, she along with ASI Ombir went to the spot i.e Patiala House Court, New Delhi where she did not find the complainant or the witness or any other person. She deposed that after

some time, she received a call and they went to Dr. RML Hospital where she found the complainant who informed that both accused had quarrelled with him and slapped him. She also deposed that she received the MLC from there and also gave an application in the hospital for giving the result on the MLC.

7. In joint cross-examination of PW-1 by both accused, the witness stated that the DD entry was received through PCR. She admitted that she came to know the name and address of the complainant for the first time only after meeting him in the hospital. She stated that upon receiving the DD entry Ex. PW-1/A, she went to Chamber No. 40, Patiala House Court at around 12:40 PM but could not enter the said chamber as it was closed. She further stated that perhaps, she reached the hospital by TSR at around 1:00 PM and she did not record statement of the complainant. She admitted that complainant did not tell her about any promissory note, plain papers or cheque having been got signed forcefully from him by the accused persons. She also stated that she did not go to court of Sh. Babu Lal, the then Ld. ASJ and did not receive copy of MLC after its result.

8. Sh. Naresh Jindal was examined as PW 2 who deposed that on 01.09.2003 he had come to Patiala House Court to attend Court of Ld. ASJ Sh. Babu Lal as he was an accused in a case alongwith accused no. 2 of the present case and few more persons. He deposed that when they appeared in the Court at about 11:30 AM, the judge instructed them to appear in Court in the post lunch session and accused B.S. Arora was the counsel for them. He deposed that after coming out of the court, accused no. 2 told him to go the chamber of accused no. 1 and after reaching in the chamber, they conversed. He further deposed that some days prior, he had given a cheque

in the sum of Rs.80,000/- to accused no. 2 drawn on the account of his wife for the purpose of Gas Agency and upon demanding back the cheque from accused no. 2, he got provoked and apprehended him and accused no. 1 slapped him twice or thrice on his face and also kicked him and both accused latched the main door of downstairs. He also deposed that he demanded back the said cheque because the purpose for which he had given the cheque was not fulfilled. He deposed that accused no. 2 had asked him to sign on two blank papers alongwith one bond which was filled by accused no. 2 and accused no. 1 had threatened him that if he will not sign the same, then they will beat him and thereafter, he signed the abovesaid papers and mentioned the date and time on the bond and thereafter, they released him. He deposed that then he went to the court of Sh. Babu Lal and told about the incident to the judge and he mentioned the same in the order sheet and told him to go to the police and thereafter, he called at 100 number and after some time, police came in the Patiala House Court and the accused persons had also come there. He further deposed that police had taken him to RML Hospital where he was admitted as he was facing problem in hearing from the left ear and had also received injuries and was discharged on the next day and while he was in hospital, police had come there, recorded his statement, but did not take any action against the accused persons as they said that the accused persons are advocates and politicians and they cannot do anything against them. He deposed that he filed complaint through his advocate in the concerned Court and got the order for registration of FIR. He relied upon his complaint Mark PW2/A(collectively), complaint to Bar Council of Delhi Mark PW2/B (collectively), receipt of the registered AD through which he had sent the complaint to Bar Council of Delhi Mark PW2/C (collectively), seizure memo of certified copy of order of the Court Ex.PW2/D and

certified copy of the order Ex.PW2/E. He deposed that during the investigation of the present case, he had given the certified copies of the order of the Ld. MM Sh. Digvinay Singh and also the photocopies of the complaint U/Sec.138 NI Act which was filed by accused no. 2 against him after cheque of his wife in the amount of Rs. 80,000/- got dishonored, to the police. He further deposed that in such complaint, accused no. 2 had used bond which was signed by him and on which he had put date and time, as proof and seizure memo of the documents was exhibited as Ex.PW2/F. He correctly identified the certified copies of the order of then Ld. MM Sh. Digvinay Singh Ex.PW2/G (collectively), copy of the complaint U/Sec.138 NI Act Mark PW2/H (collectively), certified copy of complaint U/Sec.138 NI Act and certified copies of the bond Ex.PW2/I (collectively). He deposed that he had given his MLC Mark PW2/A1 to the Court from which they had got the order for registration of FIR. The witness brought the original of the MLC which was compared to the copy and the copy was exhibited as Ex.PW2/A1 (OSR). Witness relied upon the complaint u/s 156(3) CrPC Ex PW2/A-2. Both accused persons were present in the court and were correctly identified by the witness.

9. During cross-examination by accused no. 1, PW-2 stated that accused no. 2 had appointed accused no. 1 as his advocate in case pending before the court of Sh. Babu Lal, Ld. ASJ. He further stated that besides such case, two other cases were also instituted against him but he does not remember the name of advocate engaged in those cases. Upon being asked if he paid any fees to his advocate B.S. Arora for the case before Sh. Babu Lal, he stated that since he does not know any B.S. Arora then no question of paying fees to him arises and further stated that he had never signed any vakalatnama in favour of B.S. Arora, Advocate for that case and if any, is

on record, the same was got signed by Sh. Ajay Shrivastava and same might be handed over to B.S.Arora. He stated that he knew accused no. 2 as he was "delhi yuva adhyaksh shiv sena" and he was associated with him as a worker since six months prior to the institution of the case pending before the court of Sh. Babu Lal, Ld. ASJ. He further stated that he had engaged accused no. 1 as advocate in other case also for claim of compensation for his deceased sister in law, as he had established one artificial jewellery showroom at Noida Sector-18 and on the day of its inauguration, one slab had fallen and his real sister in law namely Mrs. Pushpa Devi died due to the same and other two persons were injured and he admitted that he had paid fees of accused no. 1 for such case by cheque, but did not remember the amount of such cheque and stated that he had his account statement which he would produce. He voluntarily stated that he had paid some fees by cash in the sum of approximately Rs. 10,000/-. He further stated that the compensation amount was Rs. 50 lakhs. Upon being asked that initial fees of Rs 11,000 only was paid by him to his advocate through cheque and no cash was given, he stated he does not remember the cheque amount and had paid cash. He denied that fees of Rs. 11,000 paid by him by cheque to his advocate was towards the expenses and drafting and visit charges for Noida court and it was decided that since his brother Ved Prakash was handicapped, the advocate's fees shall be paid after the compensation was received. He stated that he does not remember if accused no. 2 had instituted any case against him. He further stated that he had handed over a cheque for amount of Rs. 20,000 but again said Rs.80,000 to accused no. 2 for gas agency. The same was objected to by accused on the ground that Rs. 80,000/- as stated by the witness was peeped in his ear by Ld. Counsel of the witness. Witness filed one page from copy of reply to the notice U/S 138 NI Act served upon him after

bouncing of cheques of Rs. 80,000/- which was exhibited as Ex. DW2/X-1. Witness stated that the factum of fees amounting to Rs.5,000/- mentioned in Ex DW2/X- 1 was in regard to case of his bhabhi Pushpa Jindal and the fees of Rs. 5000/- was paid by him for such case. He denied the suggestion that the total fees settled for the compensation case was to the tune of Rs. 2,50,000/- and witness volunteered that the fees was only Rs.11,000/-. Upon being asked as to why he had issued the cheque of Rs. 80,000/- in favour of accused no. 2 and when, witness stated that he does not remember the exact date when he gave the cheque and also does not remember as to how many years before 01.09.2003 he had given the cheque. He denied the suggestion that the cheque was given after the date of incident and after the death of his bhabhi on 16.05.2003. He stated that he had filed a suit for returning cheque of Rs.80,000/- from accused no. 2. He voluntarily stated that he visited the chamber of accused person and had orally demanded the said cheque from them however both accused persons had beaten him. He stated that he cannot produce the copy/ document regarding that suit and even cannot tell the suit number. The copy of such suit Mark DW2/XA was confronted upon the witness and the witness stated that such suit was filed by him. He stated that he does not remember whether he had filed the suit mark DW2/XA before receiving legal notice u/s 138 NI Act case filed by accused no. 2 or after. Upon being asked if he can file documents regarding his application to the gas agency, he stated that he had brought the same and the certified copy of the same was exhibited as Ex.DW2/X-2 and stated that the date of such document is 09.12.2003. He further stated that he had called on 100 number between 11:30 AM to 12:00 PM and reported that accused no. 1 and 2 had called him to their Chamber and beaten him and got his signature on a pronote and again said that the signature was taken on a blank pronote. He denied

the suggestion that the pronote was given outside the Court of Sh. Babu Lal, Ld. Judge on the relevant day at around 11:35 AM and further denied that he asked accused no. 1 to file false complaint against Sh. P.S. Hooda, then SHO, Farsh Bazar and upon refusal of the accused no. 1 for the same, he demanded copy of pronote back and got annoyed and left office of the accused. He denied that he had mentioned in his call to PCR record Ex. PW1/A that three persons had got signed a blank pronote of Rs. 1.5 lakhs in front of the court of Sh. Babu Lal, Ld. Judge and also denied that he has not reported that the blank pronote was got signed by him or any quarrel/manhandling has happened with him. He also stated that he had demanded the original cheque of Rs. 80,000/- given to accused no. 2 on 01.09.2003. He admitted that upon bouncing of the cheque, notice was served upon him and he replied to the notice but did not remember if he had requested the bank for “stop payment” of this cheque. He denied that his name was got removed from Section 138 NI Act case as he had agreed to compromise the present FIR case and voluntarily stated that the Court had itself removed his name. He denied that his wife had given a statement in another court that he had agreed to pay Rs. 80,000/- towards the fees of a case wherein his bhabhi namely Pushpa Jindal died accidentally at Noida in his presence and presence of his counsel. The witness was confronted with notice framed upon Mrs. Ritu Jindal, who is the wife of the complainant, in case titled as Ajay Srivastava vs. Ritu Jindal Ex.DW2/X-3 and the witness stated that his wife must have said that the cheque was issued to the complainant Mr. Ajay Shrivastava with respect to some transaction regarding opening of one showroom in Noida, under pressure, however, he was not present in the Court then. He denied that when accused no. 1 asked for fixing his legal fees, he told him that he shall pay 20% of the amount as his fees, however, accused told him that the accused does not take fees in

percentage and shall charge a fees of Rs. 2.5 lakhs. He further denied that he has paid Rs. 20,000/- cash to accused no. 1 alongwith cheque of Rs. 80,000/- in the name of accused no. 2 and Rs. 1,50,000/- pronote in favour of accused no. 1 comprising of total Rs. 2,50,000/- which again comes to 20% of Rs. 12,50,000/- which witness has received in the death claim of his bhabhi Pushpa Jindal. He admitted that the present complaint under Section 156 (3) CrPC was made prior to receipt of notice U/s 138 of NI Act, however, stated that he was pursuing the matter from before receiving such notice. He denied the suggestion that on 01.09.2003, he firstly issued a pronote in favour of accused no. 1 and thereafter came to the office of accused no. 1 and requested to file a false complaint against Sh. PS. Hooda, SHO Farsh Bazar and upon refusal of filing false complaint, witness went back to the Court of Sh. Babu Lal, Ld. Judge and lodged the present complaint with PCR and threatened accused no. 1 to either return his cheque and pronote or to face consequences. Witness was confronted with a complaint against him to the SHO Ex.DW2/X-4 and he denied the suggestion that the present complaint is false and was filed in order to save his skin and his wife's skin as a case U/s 138 NI Act and Ex. DW2/X-4 was filed against him. He stated that he cannot say if he produced any application fees receipt/ interview detail and date of appearance before the gas agency company as he does not remember the same and further stated that he had given the cheque to accused no. 2 for taking gas agency as "suvidha shulk" as he had political connections. The witness was confronted with judgment in case titled as Ajay Shrivastava Vs. Ritu Jindal Ex.PW2/AA-1. Witness stated that he does not remember if he had received legal notice U/s 138 NI Act prior to 01.09.2003 and a second notice on 30.09.2003. Upon attention of the witness being drawn to para 9 of the suit Mark DW2/XA wherein it was mentioned that "plaintiff

immediately after coming out of the Chamber, gave a call to PCR and he was got admitted in RML Hospital, New Delhi and stated all true facts before the police”, witness stated that his counsel had forgotten to mention that he had gone to the Court of Sh. Babu Lal, Ld. Judge.

10. In the cross examination on behalf of accused no. 2, witness stated that he had given the pronote, filled by accused no. 2 after returning from the Court in the Chamber, to accused no. 2. He further stated that accused no. 2 did not ask him as to when he will make the payment of the bounced cheque and denied that he had told accused no. 2 that he shall make the payment of the bounced cheque within 5-6 days of the date of incident and voluntarily stated that he had asked accused no. 2 for returning the cheque that he had given. Upon being asked as to who were the other persons who manhandled him except for the accused, as mentioned by him in the suit Mark DW2/X-A, he replied that no other person had manhandled him. Upon being further asked if it had been mentioned in Mark DW2/X-A that the pronote was blank, he stated that the pronote was not blank and the other two papers were blank. He denied the suggestion that pronote was handed over in the Court of Sh. Babu Lal and he alongwith 6-7 accused persons of the said case, had come to the Chamber of both the accused for having tea and the incident had never happened. Witness was confronted with evidence by way of affidavit Mark DW2/XC-1 and asked if such document was filed by or on behalf of him, to which the witness replied that he cannot tell the same as the document does not bear his signature. He denied the suggestion that he was intentionally concealing that Mark DW2/XC-1 is the same affidavit which was filed by him in the case of Ajay Shrivastava vs. Ritu Jindal & Anr. in the court of Sh. Anuj Aggarwal. He also stated that the cheque which was given to accused no. 2 was filled

except for the date and he did not remember as to in whose handwriting the cheque was filled. Copy of notice sent to the accused no. 2 dated 20.09.2003 Mark DW2/D-1 and copy of notice sent to the accused no. 1 dated 09.10.2003 Mark DW2/D-2 were confronted upon the witness. Witness stated that Mark DW2/D-1 was sent on behalf of his wife to accused no. 2 and Mark DW2/D-2 was sent on his behalf and the contents of the same are correct. He stated that he was not present when notice was framed by the Court in the case under Section 138 NI Act upon his wife, who had stated that cheque was filled in the handwriting of her husband including the date. He denied the suggestion that the date was filled in his handwriting on that cheque. He denied the suggestion that he was not beaten by the accused and the cheque and pronote were given for the fees payable by him for the case of his bhabhi Pushpa Jindal. He stated that on the day of the alleged incident, he was threatened by accused no. 2 that if he will not sign the pronote, then he will be beaten and to avoid any quarrel or beating, he signed the abovesaid alleged pronote. He denied the suggestion that as the matter was settled between him and the builder and with intention not to pay the fees of advocate, he had removed accused no. 1 from that case. Upon being asked if he has any document to show the stop payment instruction given by him for the cheque which was dishonored, he stated that the document was not with him as long time had elapsed. He admitted that the cheque was dishonored for reason "insufficient funds". He stated that the cheque was presented two times and he had given stop payment instructions after the cheque was presented for the first time.

11. Sh. Ashish Dabas was examined as PW 3. He was a summoned witness and stated that the order dated 01.09.2003 of Ld. ASJ Sh. Babu Lal

is already Ex. PW-2/E (OSR) and the order dated 03.03.2004 of Ld. ASJ Sh. Babu Lal was marked as Mark PW3/A (OSR). Witness was not cross-examined by the accused persons despite opportunity being given.

12. Sh. Gugan Singh was examined as PW-4 who stated that on 06.04.2005, he was posted as a constable at PS Tilak Marg and on such day, two persons namely Ajay Srivastava and B.S. Arora came to PS and met with IO/SI Subhash and showed their anticipatory bail order and thereafter, IO formally arrested both the persons and prepared their arrest memo and personal search memo. He proved arrest memo and personal search memo of accused Ajay Srivastava as Ex.PW4/A and Ex.PW4/B respectively and arrest memo and personal search memo of accused B.S. Arora as Ex.PW4/C and Ex.PW/D respectively. Accused B.S. Arora was present in the Court and was correctly identified by the witness. Identity of accused Ajay Srivastava was not disputed by his counsel as his counsel had moved an exemption application stating that the identity of the accused is not disputed. The witness was not cross-examined by the accused persons despite opportunity being given.

13. Sh. Alok Jetly was examined as PW5 who had brought entire judicial file of case titled Ajay Shrivastava Vs. Ritu Jindal etc., CC No. 2040/1/2003 from the record room. The document already Mark PW2/J (colly) was exhibited as Ex. PW5/A (colly) (OSR), the document already Mark PW2/H was exhibited as Ex. PW5/B (colly) (OSR). The judgement/document already Ex. PW2/AA-1 was exhibited as Ex. PW5/C (colly) (OSR). The orders/document already Ex. PW2/G (colly) was exhibited as Ex. PW5/D (colly) (OSR). The notice framed upon wife of the complainant/document already Ex. PW2/X3 (colly) was exhibited as Ex.

PW5/E (colly) (OSR). The legal notice sent to accused no. 1/document already Mark DW2/D2 (colly) was exhibited as Ex. PW5/F (colly) (OSR). The document stated to be evidence by way of affidavit of the complainant already Mark DW2/XC1 (colly) was exhibited as Ex. PW5/G (colly) (OSR). The documents stated to be pertaining to gas agency already Ex. DW2/X2 (colly) was exhibited as Ex. PW5/H (OSR). The witness was not cross-examined by the accused persons despite opportunity being given.

14. Dr. Seema Wasnik was examined as PW-6 who deposed that Ex.PW2/A-1 is a discharge summary in the name of Naresh Jindal and the date of admission as per the discharge summary is 01.09.2003 and the date of discharge is 02.09.2003 and the diagnosis in the discharge summary is written as "INJURY FACE (L) SIDE C (i.e. with) ASSAULT". It was observed that Ld. Counsel for complainant without permission of the court had shown the original discharge summary to the witness while the examination of such witness was getting conducted. Attention of the witness was drawn towards document Mark X which bears her signature. Witness highlighted the contents of the document disclosing an alleged history of kicking and hearing loss in left ear and no history of bleeding.

15. In cross examination of the witness by accused no. 1, witness stated that Mark X has the name Jindal written but the first name is not visible and the date 01.09.03 is also visible. She stated that the diagnose was told by the patient and there was no apparent bodily injury visible in Mark X. She stated that the handwriting in which her name has been written at the bottom of the page in blue ink is not hers. She further stated that they give MLC to the police and not to the patient and no police official met her at the hospital regarding this case and her statement was never recorded by

any police official regarding this case. She also stated that the discharge summary has not been made in her handwriting. Such cross-examination was adopted on behalf of accused no. 2.

16. Retd. Insp. Subhash was examined as PW-7 who deposed that in the year 2003, he was posted at PS Tilak Marg as Sub Inspector and as far as he can remember, he was marked complaint of this case in the month of December, 2003 and he got the FIR registered and conducted the investigation. He deposed that during the course of investigation, he contacted SI Sarita and inquired if she received any MLC of the complainant and she informed that though MLC was received by her, however, the same had been submitted to the hospital for the purpose of obtaining the result/ opinion regarding the nature of injury. He further deposed that he went to MLC Clerk/ Record Clerk at the RML Hospital and Clerk informed him that the MLC of complainant/ patient namely Naresh Jindal had already been collected by ASI Waris Ahmad and he then contacted ASI Waris Ahmad who informed him that the MLCs collected by him had been submitted to the Duty Officer and he wrote an application in the name of CMO, RML Hospital for the purpose of obtaining the duplicate MLC with result regarding nature of injury qua the injured Naresh Jindal and received the duplicate MLC with result regarding nature of injury which was opined as simple. He also deposed that he collected the ordersheet of the Court of Sh. Babu Lal, the then Ld. ASJ (now Retd) and contacted the accused namely Sh. B.S. Arora and interrogated him and asked for the pronote which was allegedly got signed by him from the complainant in his Chamber and the accused informed him that the said pronote had been submitted by him in the Court of Sh. Digvijay Singh, the then Ld. MM and he moved an application to collect the pronote

Ex.PW5/A(colly)(OSR) and as per the complainant, the said pronote was for Rs. 1,50,000/-. He proved arrest memo of accused Ajay Shrivastava Ex.PW4/A, arrest memo of accused B.S. Arora Ex.PW4/C, personal search memos of accused Ex.PW4/B and Ex.PW4/D and memos vide which accused were released on bail Ex.PW 7/A and Ex.PW 7/B. He deposed that he seized the certified copy of order of Sh. Babu Lal, the then Ld. ASJ which was produced before him by the complainant Naresh Jindal vide memo Ex. PW2/D and seized the certified copies of the orders dated 09.12.2003, 18.03.2004, 21.05.2004 and 05.07.2004 of the Court of Sh. Digvijay Singh, the then Ld. MM and copy of the complaint U/s 138 of NI Act vide seizure memo Ex. PW2/F, recorded the statements of complainant as well as of the witnesses U/s 161 CrPC and proved the charge sheet Ex.PW7/C(colly). He identified the accused persons who were present in the court.

17. In cross examination by accused no. 1, witness stated that he met the complainant for the first time probably on 14.09.2004 when he was called to the police station to assist in the investigation of the case. He denied the suggestion that MLC as well as the result Mark X were received from the complainant. He stated that he has not seen the original of Mark X as the original was not traceable. He further stated that when he received the document Mark X, the name of Dr. Seema Wasnik was not written there. Upon being asked if he had inquired from SI Sarita in her statement U/s 161 Cr.P.C if complainant told her about obtaining of signatures on pronote or on cheque or on 2-3 blank papers by the accused, witness stated that he had inquired, however, SI Sarita told him that complainant did not tell her that any pronote or cheque or blank papers were forcibly got signed from the complainant by the accused and also did not tell that any quarrel/

jhagda took place outside the Court of Sh. Babu Lal, the then Ld. ASJ. He also stated that he had collected the arrival entry of SI Sarita bearing DD No. 38-A dated 01.09.2003 Ex. PW7/D-1. Ex.PW1/A was shown to the witness and he stated that W/SI Sarita did not inform him that two advocates and three other persons had forcibly taken the signature of the complainant on bond for Rs. 1,50,000/- outside the Court of Sh. Babu Lal, the then Ld. ASJ. Such cross-examination was adopted on behalf of accused no. 2.

18. After closing of prosecution evidence, statement U/s 313 Cr.P.C of the accused B. S. Arora was recorded and all the incriminating evidence was put to the accused and he stated that he is innocent and has been falsely implicated in this case. He stated that the cheque was given to accused no. 2 on 26.07.2003 in lieu of legal fee charges in respect of one case during the opening of one showroom at Krishna Apra Plaza Sector 18, Noida where the sister in law of complainant died due to fall of one marble slab put in the lift area and a case U/s 304-A IPC was registered. He stated that in such case, complainant had engaged him as an advocate for the purpose of getting the building sealed and to book the culprits Us 304-A IPC and requested him to file compensation case at Noida Courts as well as before the Hon'ble Allahabad High Court for which Rs. 2,50,000/- towards the legal charges and fees was to be paid by him. He further stated that the complainant compromised the case out of Court in the month of August 2003, however, promised to pay balance amount of approximately Rs. 2,30,000/- as Rs. 20,000/- was already given by him by both cash and cheque and thus, he issued cheque of Rs 80,000/- in the name of accused no. 2 and a pronote of Rs. 1,50,000/- which was to be encashed in the name of accused no. 1 by 01.09.2003 on 26.07.2003 at the house of accused no. 2

in the presence of one DCP Sh. Dinesh Gupta. He also stated that mentioning of cheque of Rs. 80,000/- towards the legal charges is also admitted by wife of the complainant in the notice given under Section 138 NI Act case before the Court of Sh. Digvinay Singh, the then Ld. MM by stating that the cheque was issued in respect of legal charges towards the incident at Noida Apra Plaza. He further stated that the cheque was bounced in the month of August, 2003 and it was intimated telephonically to the complainant who requested to present the same in the last week of August, 2003 and also promised to make appropriate arrangements for honouring of the cheque, however, again on 29.08.2003, the cheque was presented and it again got dishonored due to insufficient funds and intimation was sent to him on 02.09.2003. He stated that on 01.09.2003, he refused to appear before the Court of Sh. Babu Lal as counsel of complainant as the cheque was already dishonored and he was not paying his fees and the judge gave an opportunity to the complainant to arrange for a new advocate and kept the matter in post lunch as the matter was kept for PE. He stated that thereafter, they were discussing about the pronote of Rs. 1,50,000/- outside the Courtroom of Sh. Babu Lal, the then Ld. ASJ and the complainant refused to make the payment and further told him that the cheque and pronote will be encashed only in the condition if he make a false complaint against Sh. P.S. Hooda, the then SHO PS Farshbazar and he refused the same and the complainant got annoyed. He further stated that the complainant neither visited his chamber on that day nor any incident as alleged, occurred and the complainant is habitual of filing false complaints and has filed this present case only to save his and his wife's skin from legal proceedings.

19. Statement U/s 313 Cr.P.C of the accused Ajay Srivastava was

recorded and all the incriminating evidence was put to the accused and he stated is innocent and has been falsely implicated in this case. He stated that on the relevant day, no quarrel had happened between the complainant or him and accused no. 1. He further stated that the complainant had given him a cheque in the sum of Rs 80,000/- towards the legal fee payable to accused no. 1 in his name and also gave a pronote in the sum of Rs. 1,50,000/- duly signed. He also stated that the complainant told him that if he becomes a witness against accused no. 1, then he shall remove his name from the complaint which he had given in Police Station and he refused for the same. Both the accused preferred to lead evidence in their defence.

20. Application under Section 315 CrPC moved on behalf of both accused seeking to summon the Ahlmad with record of case titled as Ajay Srivastava vs. Ritu Jindal & Ors. in the court of Sh. Digvinay Singh, then Ld. MM was allowed.

21. Sh. Alok Jetly was examined as DW-1 and stated that he had brought the judicial file bearing no. 2040/1 titled as Ajay Shrivastava Vs. Ritu Jindal U/s 138 N.I. Act wherein a complaint was filed for the above noted offences against Ritu Jindal and Naresh Jindal on 11.11.2003 and as per record, the date of the cheque bearing no. 262600 was 26.07.2003 and the name of the payee has been mentioned as Ajay Shreevastava and the amount in words as well as figures is Rs. 80,000/-. He further deposed that two return memos of the cheque are on record and the first cheque return memo is dated 30.07.2003 and as per the same, the cheque bounced due to insufficient funds and another returning memo is dated 02.09.2003 with remarks insufficient funds. He also deposed that the evidence by way of affidavit on behalf of accused DW-1 (Ritu Jindal) is also on record and in

the para 4 of that affidavit it has been submitted “that the relations between my husband and complainant became sour as my husband was beaten by Sh. B.S. Arora Advocate in his chamber on 01.09.2003 and was forced to sign a blank pronote....”.

22. In cross-examination on behalf of the prosecution, witness stated that he has no personal knowledge of the case bearing no. 2040/1 titled as Ajay Shrivastava Vs. Ritu Jindal U/s 138 N.I. Act and also of the present case and he is merely a summoned witness who has brought the summoned record. Vide separate statement of accused persons, DE was closed.

23. Ld. APP for the State and Ld. Counsel for the complainant argued that prosecution has proved their case beyond reasonable doubt and there is sufficient material on record to prove the guilt of both accused and prayed that the accused persons be convicted. It was contended that pronote and other blank documents were forcibly got signed from the complainant by the accused persons.

24. Per contra, accused no. 1 and Ld. Counsel for the accused no. 2 argued that the accused have been falsely implicated in the case and are innocent. It was contended that there are material contradictions in the testimony of the complainant and the complainant has concealed the fact of alleged extortion in other legal documents and proceedings between the parties. It was stated that the pronote and the cheque were given towards the fees of accused no. 1, who had been engaged as a counsel by the complainant in some other case. It was argued that no proper medical document of the complainant showing injury was brought on record by the prosecution. It was further argued that case of the prosecution is full of

contradictions and prosecution has failed to prove the elements of the provisions and as the prosecution has failed to prove its case beyond reasonable doubt, accordingly accused be given benefit of doubt and be acquitted of all the charges.

25. Charges under Section 323/341/384/506/34 IPC have been framed upon both accused.

26. Section 321 IPC defines voluntarily causing hurt as follows:

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".

27. Section 323 IPC provides as follows:

Punishment for voluntarily causing hurt - Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

28. The essential elements for proving an offence under Section 323 IPC are that firstly, the hurt is voluntary in nature, and secondly, such hurt should not be a consequence of grave and sudden provocation. The Section explicitly states that Section 334 IPC, which talks about voluntarily causing hurt due to provocation, is an exception to it.

29. Section 339 IPC defines wrongful restraint as follows:

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

30. Section 341 IPC provides as follows:

Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

31. The essential elements for proving an offence under Section 341 IPC are voluntary obstruction of a person and the obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

32. Section 383 IPC defines extortion as follows:

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person

so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”

33. Section 384 IPC provides as follows:

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

34. The essential elements for proving an offence under Section 384 IPC are intentionally putting a person in fear of hurt or injury and dishonestly inducing such person to deliver a valuable security.

35. Section 503 IPC defines criminal intimidation as follows:

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

36. Section 506 IPC provides as follows:

Punishment for criminal intimidation - Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

37. The essential elements for proving an offence under Section 506 IPC are that there should be a threat of injury to a person, his reputation; or, his property; or, the person or reputation of anyone in whom that person is interested and the threat must be with the intent to cause alarm to that person; or, to cause that person to do an act which he is not legally bound to do as the means of avoiding the execution of such threat; or, to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding the execution of such threat.

38. Section 34 IPC provides as follows:

Acts done by several persons in furtherance of common intention - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

39. It is settled principle of criminal law that an accused is presumed to be innocent until proven guilty and the burden lies on the prosecution to prove the guilt of accused beyond reasonable doubt by bringing on record reliable and credible evidence. The prosecution is under a legal obligation to prove each and every ingredient of offence beyond reasonable doubt, unless otherwise so provided by any statute.

40. It has been alleged in the present case that on 01.09.2003, complainant went to the chamber of accused no. 1 where accused no. 2 was also present and complainant asked accused no. 2 to return his cheque for the sum of Rs. 80,000/-, however, accused no. 2 got annoyed and caught him and accused no. 1 gave beatings, slaps and blows to the complainant and he was threatened of being further assaulted and the door of the chamber was bolted from the inside and the complainant was made to sign on a pronote which was filled by accused no. 2 and on some other blank papers.

41. It is not in dispute that complainant and both accused knew each other from before filing of the present case and a cheque had been given by the complainant to accused no. 2 and a promissory note in favour of accused no. 1 was signed by the complainant. It is the case of the complainant that the cheque was given for taking a gas agency whereas accused state that the cheque was given towards the fees of the accused no. 1 for a case pending in Noida Court which pertained to an incident wherein slab had fallen upon sister in law of the complainant namely Mrs. Pushpa Devi and she had died and accused no. 1 was engaged as a counsel by the complainant herein, in such case. Further, it is the case of the complainant

that he not signed the promissory note wilfully but upon extortion being practiced upon him.

42. It was argued on behalf of the accused that on the date of the alleged incident, the complainant had not even come in the chamber of accused no. 1 and thus, the present incident could not have happened and rather, the pronote and the cheque were given on 26.07.2003 at the house of accused no. 2 in the presence of one DCP Sh. Dinesh Gupta. The existence of pronote and its form is not in dispute. Perusal of the pronote reveals that the same has been executed on 01.09.2003 and thus, there is a contradiction in the stand taken by the accused. Moreover, a suggestion was given on behalf of the accused no. 1 in cross examination of the complainant that the pronote was given outside the Court of Sh. Babu Lal, Ld. Judge on 01.09.2003 at around 11:35 AM, however, such suggestion was denied by the complainant. It was further suggested to the complainant in his cross examination on behalf of accused no. 2 that pronote was handed over in the Court of Sh. Babu Lal, and the complainant alongwith 6-7 accused persons of the said case had come to the Chamber of both the accused for having tea and the incident had never happened and the said suggestion was also denied by the complainant. In view of the suggestions put on behalf of the accused, it can be clearly observed that it has been admitted by the accused themselves that the pronote was given on 01.09.2003 and the complainant had also come in the chamber of accused no. 1. It is also interesting to note that in the complainant dated 01.09.2003 Ex. DW2/X4 which was given by both accused to the SHO of Police Station Tilak Marg, it has been mentioned that the complainant had come to his office and signed a promissory note. Such complaint is diametrically opposite to the defence taken by the accused in the trial. At one stage

accused submitted that the pronote was given on 26.07.2003 in presence of DCP Sh. Dinesh Gupta and on the other hand they have suggested that the pronote was given on 01.09.2003 outside the court of Sh. Babu Lal, Ld. ASJ and then there is another stance brought forward by the accused vide Ex. DW2/X4 wherein it has been mentioned that the pronote was given in the chamber of accused no. 1 in presence of 4-5 other clients and Ct. Bahadur Singh, PSO attached with accused no. 2. The contradictory stands taken by the accused makes their defence untrustworthy and it can be concluded that the complainant had indeed come to the chamber of accused no. 1 and signed the pronote on 01.09.2003. Thus, the prosecution has been able to prove beyond reasonable doubt that the complainant had come in the chamber of accused no. 1 and signed the pronote.

43. It is further shocking to observe that the accused persons have not examined either DCP Sh. Dinesh Gupta or 4-5 other clients and Ct. Bahadur Singh, PSO attached with accused no. 2 in defence evidence, even if it is to be believed that one of the stand taken by the accused is true as such people have been stated to be with the accused when the complainant had given the pronote. Such witnesses would have been star witnesses for the accused persons as they could have deposed as to the circumstances in which the pronote was given by the complainant to be accused. Non examination of such material witnesses for the reasons best known to be accused, is fatal for the case of the accused.

44. It was argued on behalf of the accused that when accused no. 1 asked for fixing his legal fees in the case before the Noida Court, complainant told him that he shall pay 20% of the amount as his fees, however, accused no. 1 told the complainant that he does not take fees in

percentage and shall charge a fees of Rs. 2.5 lakhs and the complainant had paid Rs. 20,000/- cash to accused no. 1 alongwith cheque of Rs. 80,000/- in the name of accused no. 2 and Rs. 1,50,000/- pronote in favour of accused no. 1 comprising of total Rs. 2,50,000/- which again comes to 20% of Rs. 12,50,000/- which complainant received in the death claim of his bhabhi Pushpa Jindal. Further, it is the consistent plea of the accused that the cheque bearing no. 262600 dated 26.07.2003 was issued in the name of the accused no. 2 for the purpose of payment of legal fees of accused no. 1 for case registered under Section 304A IPC before the Noida Court where slab had fallen upon sister in law of the complainant namely Mrs. Pushpa Devi and she had died when showroom of the complainant was inaugurated. It is an admitted fact that accused no. 2 had filed a case under Section 138 NI Act. Accused Ritu Jindal, who is the wife of the complainant of the present case was summoned as an accused in such case under Section 138 NI Act. It has come in evidence in the present case that the aforesaid cheque got dishonoured on 30.07.2003 and on 02.09.2003 for reasons funds insufficient. It was argued on behalf of the accused that Ritu Jindal had stated in the notice framed upon her under Section 251 CrPC in Section 138 NI Act case, that complainant had agreed to pay Rs. 80,000/- towards the fees of a case wherein his bhabhi namely Pushpa Jindal died accidentally at Noida in his presence and presence of his counsel. The complainant responded to such averment by saying that his wife must have said that the cheque was issued to the complainant Mr. Ajay Shrivastava with respect to some transaction regarding opening of one showroom in Noida, under pressure. It is relevant to mention that the pronote allegedly given towards payment of fees of accused no. 1 has also been filed in the case under Section 138 NI Act.

45. It is pertinent to discuss that the above case under Section 138 NI Act resulted in acquittal of accused Ritu Jindal vide judgement dated 10.06.2011. It was observed by the Ld. Judge in such judgement that *“pronote is quite vague and defies all logic. It is highly unbelievable that towards payment of advocate fees, a pronote would be given by a litigant in favour of his counsel. The said pronote purports to have been signed by Naresh Jindal i.e. husband of accused on 01/09/2003 and as per the same, an amount of Rs.1,50,000/- is to be paid by the promisee i.e. Naresh Jindal to the promiser i.e. B S Arora, Advocate on 01/09/2003. This sounds very strange that for a payment which is to be made on 01/09/2003, a pronote would be given on 01/09/2003 itself. The contents of the pronote raises the strong suspicion as to the circumstances in which it purports to have been issued.”*. It has been clearly stated by the Ld. Judge that *“I am also not ready to go by complainant version that pronote ExCW1/G was issued by husband of accused towards the payment of legal fees to BS Arora, Advocate.”*. From the observations of the Ld. Judge, before whom the issue raised was that the pronote was not given towards legal fees of accused no. 1 but for payment towards gas agency, it can be clearly seen that the court has discredited the version of the complainant therein who is the accused no. 2 herein, that the cheque was issued towards payment of fees of accused no. 1. Further, admittedly the said judgement has not been challenged by the accused herein before any court and thus, the same has attained finality. This court is also of the considered opinion that it is unconscionable to believe that a person shall issue a promissory note to the promisee, promising to make a payment on the same day and thus, the prosecution has been able to prove that the promissory note could not have been willfully issued to make payment of an advocate’s fees on the same day as the date of issue of the pronote and therefore, the defence raised by

the accused is liable to be rejected.

46. It was argued on behalf of the accused that on 01.09.2003, accused no. 1 refused to appear before the Court of Sh. Babu Lal as counsel of complainant as the cheque given to him towards his fees, was already dishonored and the complainant was not paying his fees and the judge gave an opportunity to the complainant to arrange for a new advocate and kept the matter in post lunch as the matter was kept for PE. Perusal of the relevant order passed by the Ld. ASJ reveals that it has been noted that “before lunch accused Naresh Chander had appeared and has brought to my notice that some criminal incident has taken place with him and he had gone to police station to lodge some report but he has not turn up. Keeping in view the circumstances of the case he is exempted from personal appearance for today and case is fixed for PE on 24.09.03.” Upon reading the order, it can be clearly noted that the submission made on behalf of the accused that accused no. 1 refused to appear before the Court of Sh. Babu Lal as counsel of complainant as the cheque was already dishonored and he was not paying his fees and the judge gave an opportunity to the complainant to arrange for a new advocate and kept the matter in post lunch as the matter was kept for PE is nowhere mentioned and the submission on behalf of the accused is vague, unfounded and liable to be rejected. Rather, said order is supporting the case of the prosecution to the extent that the complainant had informed the court that some criminal incident had happened with him and in fact, the court had also recorded such observation. Such conduct of the complainant of apprising the court of the criminal incident forms part of the same transaction of the incident and is relevant to the facts and circumstances of the present case in terms of Section 6 of the Indian Evidence Act. Thus, it can be clearly seen from

the conduct and deposition of the complainant that he had not signed the pronote willfully.

47. The most important deposition in the present case, of the complainant is, that when the complainant demanded back the cheque from accused no. 2, accused no. 2 got provoked and apprehended him and accused no. 1 slapped him twice or thrice on his face and also kicked him and both accused latched the main door of downstairs and further, accused no. 2 had asked him to sign on two blank papers alongwith one bond which was filled by accused no. 2 and accused no. 1 had threatened him that if he will not sign the same, then they will beat him. Upon perusal of the entire material available on record, the arguments led on behalf of the parties and the evidence adduced, it can be observed that the complainant has consistently deposed that he was threatened to be beaten up if he does not sign on the pronote. Such contention of the prosecution could not be dented by the accused. Certain questions put and suggestions given by the accused were in the nature of admissions which go against them in the trial and the other questions and suggestions were either not relevant to the facts and circumstances of the present case or were contradictory and could not shake the credibility of the complainant. The prosecution was able to prove the allegations of extortion by the accused beyond reasonable doubt and such allegations could not be controverted by the accused persons. The accused persons did not even step into the witness box to prove their defence and thus, it can be said that the defence taken by the accused was merely bald, baseless and thus, liable to be rejected.

48. It was argued on behalf of the accused that there are many inconsistencies and contradictions in the testimony of the complainant. It

was contended that it is the case of the complainant that he had given the cheque for the purpose of gas agency, however, prosecution has filed no relevant document to show that complainant had applied for any gas agency. As per record, the complainant stated that he had given the cheque to accused no. 2 as "suvidha shulk" for getting the gas agency and filed Ex.DW2/X-2, which is a document stated to be an application form for the gas agency and admitted that the date of such document is 09.12.2003. It can be seen that the gas agency document produced by the complainant is dated much later than the date of the cheque, however, it needs to be appreciated that whether non production of appropriate document qua gas agency by the complainant is material, in fact and circumstances of the present case. It is an admitted position that a cheque was issued by the complainant to accused no. 2 and there are rival contentions regarding the purpose for which the cheque was issued. The matter in issue and the offence alleged in the present case is that the complainant was forcibly made to sign on a pronote. Even if it is to be assumed that the cheque was given for the purpose of fees of accused no. 1 and not for the gas agency, the same will have not have any effect on the merits of the case. Thus, merely because appropriate documents of gas agency were not produced by the complainant, it cannot be said that the alleged incident, which is totally unrelated to the purpose for which the cheque was issued, did not happen and thus, non-filing of document of gas agency is not fatal to the case of the prosecution.

49. It was further argued on behalf of the accused that there are material contradictions in the testimony of the complainant as the complainant did not inform the police in the PCR Call that he had been beaten by the accused persons and had been wrongfully restrained and rather he merely

stated that his signatures had been forcibly taken on bond of Rs. 1.5 lakhs and the same is evident vide DD No. 14 A dated 01.09.03 Ex. PW1/A. It was argued that similarly the complainant has not mentioned the factum of going to the Court of Sh. Babu Lal, Ld. Judge in the suit Mark DW2/X-A. It was stated that the complainant in the suit Mark DW2/X-A had also mentioned that other persons had also manhandled him in addition to the accused persons, however, has made no such allegation in the present case and moreover, in the said suit, complainant has mentioned that the pronote was blank, however, in his evidence in the present case has stated that the pronote was filled by accused no. 2. It was stated that the complainant in his testimony, earlier stated that he did not know any person namely B.S. Arora, however, later admitted that he had engaged B.S. Arora as an advocate in some other cases.

50. Undoubtedly, there are inconsistencies between the testimony of PW 1 and the other materials available on record, but it needs consideration that the issue before this court is whether accused was forcibly made to sign on the pronote. At this juncture, reliance is placed on the judgement of the Hon'ble Supreme Court in the case titled as **Mritunjoy Biswas vs. Pranab alias Kuti Biswas & Anr., (2013) 12 SCC 796** as follows:

“As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the

evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (See Leela Ram (dead) through Duli Chand v. State of Haryana and another [(1999) 9 SCC 525 : (AIR 1999 SC 3717 : 1999 AIR SCW 3756)], Rammi alias Rameshwar v. State of M.P. [(1999) 8 SCC 649 : (AIR 1999 SC 3544 : 1999 AIR SCW 3546)] and Shyamal Ghosh v. State of West Bengal [(2012) 7 SCC 646 : (AIR 2012 SC 3539 : 2012 AIR SCW 4162).”

51. In view of the judgement of the Hon’ble Apex Court, it can be seen that the inconsistency in the testimony of complainant about not informing the police that he had been beaten by the accused persons and had been wrongfully restrained and non-mentioning of the factum of going to the Court of Sh. Babu Lal, Ld. Judge in the suit Mark DW2/X-A and stating in

the suit Mark DW2/X-A that other persons had also manhandled him and also mentioning that the pronote was blank and further stating that he did not know B.S. Arora, does not go to the root of the case as the same is not the matter in issue before the court. Moreover, the complainant in his testimony has clarified that no other person except for the accused persons had beaten him and that the pronote was not blank when he had signed the same. Furthermore, such discrepancies are merely minor in nature and there are no major inconsistencies in the testimony of the complainant and the evidence of the complainant cannot be thrown out merely on the basis of such minor inconsistencies specially when the complainant has otherwise testified consistently. It is also pertinent to mention that in DD No. 14 A dated 01.09.03 Ex. PW1/A, though the complainant did not inform the police that he had been beaten by the accused persons and had been wrongfully restrained, same is not fatal to the case of the prosecution as such document cannot be considered as an encyclopedia of the entire incident that happened. Moreover, it has already been observed that the complainant had visited the office of accused no. 1 on the date of the incident and there was a cheque given by complainant to accused no. 2. Further, merely because the witness earlier stated that he did not know any person namely B.S. Arora, however, later admitted that he had engaged B.S. Arora as an advocate in some other cases does not mean that there are major inconsistencies in the testimony of the complainant which go to the root of the case. Thus, the contention led on behalf of the accused that there are major inconsistencies in the testimony of the witnesses is liable to be rejected.

52. It was stated on behalf of the accused that PW 1/W/SI Sarita deposed that on 01.09.200 she was on emergency duty and upon receiving

DD no. 14A (regarding quarrel) vide Ex. PW-1/A, she along with ASI Ombir went to the spot i.e Patiala House Court, New Delhi where she did not find the complainant or the witness or any other person whereas the complainant in his evidence has stated that he called at 100 number and after some time, police came in the Patiala House Court and the accused persons had also come there and the police had taken him to RML Hospital where he was admitted. It is again observed that such inconsistencies are minor in nature and do not go to the root of the matter in issue of the present case. Even if it is to be assumed that when PW1 came to Patiala House Court and did not find the complainant or the witness or any other person, the same will not affect the matter an issue in the present case, which is that the complainant was made to forcibly sign the pronote. It is also interesting to note that the accused persons in their written submissions have admitted that when accused no. 1 and accused no. 2 had gone to attend a matter in the court, they saw the complainant talking to one police official and the complainant pointed towards the accused persons by saying “ye aa rahe hai dono” upon which the police official came towards the accused persons and asked them about the alleged incident. Such averment in the written submission clearly shows that the deposition of the complainant about when he called at 100 number, police came after some time in the Patiala House Court and the accused persons had also come is reliable and defence taken by the accused is unfounded.

53. It was argued on behalf of the accused that the complainant asked accused no. 1 to file false complaint against Sh. P.S. Hooda, then SHO, Farsh Bazar and upon refusal of the accused no. 1 for the same, complainant demanded copy of pronote back and got annoyed and left office of the accused. Upon perusal of material available on record, it is

observed that the accused have not brought even an iota of evidence on record to support such contention. The accused did not even examine themselves in defence evidence to prove such contention. In absence of any evidence to prove that the complainant asked accused no. 1 to file false complaint against Sh. P.S. Hooda, then SHO, Farsh Bazar and upon refusal of the accused no. 1 for the same, complainant demanded copy of pronote back and got annoyed and left office of the accused, such contention on behalf of the accused is liable to be rejected and it is reiterated that the prosecution has proved their case beyond reasonable doubt.

54. Another aspect which needs consideration is the question whether any hurt was actually caused to the complainant by the accused persons. It is the case of the prosecution that when the complainant demanded back his cheque from accused no. 2, he got provoked and apprehended him and accused no. 1 slapped him twice or thrice on his face and also kicked him and police had taken him to RML Hospital where he was admitted as he was facing problem in hearing from the left ear and had also received injuries and was discharged on the next day. In order to substantiate its claim, prosecution relied upon testimony of Dr. Seema Wasnik who was examined as PW-6. Witness deposed that Ex.PW2/A-1 is a discharge summary in the name of Naresh Jindal and the date of admission as per the discharge summary is 01.09.2003 and the date of discharge is 02.09.2003 and the diagnosis in the discharge summary is written as “INJURY FACE (L) SIDE C (i.e. with) ASSAULT”. In her cross-examination, witness stated that the diagnosis was told by the patient himself. Thus, it can be observed that diagnosis in Ex.PW2/A-1 was merely written on the dictation of the complainant and there is no mention of any injuries having been suffered by the complainant in such document, in opinion of the medical

expert. Moreover, surprisingly, the original discharge summary was in possession of the complainant and merely photocopy of the same was seized or produced by the investigating agency and thus, the circumstances in which such document has been produced casts a shadow of doubt about the veracity of the document. It can be clearly observed that discharge summary Ex.PW2/A-1 is an unreliable document firstly, since it does not have any opinion or mention of visible injuries by the doctor and secondly, the manner in which the same has come on record make it an unworthy document to prove the case of the prosecution qua hurt caused to the complainant, beyond reasonable doubt. Further, prosecution relied upon document Mark X to prove the offence of hurt caused to the complainant. PW-6 in her cross-examination stated that there was no apparent bodily injury visible in Mark X. Perusal of document Mark X reveals that name of the witness i.e. Dr. Seema Wasnik has been written at the bottom of such document. Witness stated that she has not written such name. PW-7 Retd. Insp. Subhash in his cross-examination stated that when he received the document Mark X, the name of Dr. Seema Wasnik was not written there. Thus, it can be observed that PW-6 has stated that her name in Mark X has not been written by her and moreover, PW-7 has stated that when he received document Mark X, it did not have the name of Dr. Seema Wasnik written but the same is now written. It is a possibility that Mark X has been tampered and name of Dr. Seema Wasnik has been added to it. There exists a cloud of doubt over document Mark X and thus, such medical document is also unreliable.

55. Ld. Counsel for complainant relied upon judgement of the Hon'ble Supreme Court in the case titled as **Lakshman Singh vs. State of Bihar (now Jharkhand), Criminal Appeal no. 606 of 2021** to argue that

production of MLC is not sine qua non for proving the offence under Section 323 IPC. However, in the present case it is not the situation that MLC and medical document has not been produced but the same have been produced in doubtful circumstances and are of unreliable nature.

56. In view of the above discussion it is observed that no cogent medical documents of alleged hurt having been committed upon the complainant could be produced by the prosecution as one medical document does not contain any opinion of the doctor of any injury having being suffered by the complainant and the other medical document seems to have been tampered, as discussed above and thus cannot be relied upon. It is observed that the prosecution has been unable to prove that the accused persons had voluntarily caused hurt to the complainant beyond reasonable doubt. Moreover, it cannot be ruled out that the injuries which were recited by the complainant in the diagnosis as mentioned in the discharge summary, were suffered prior to the incident in question and are totally unrelated to the incident in question. It is pertinent to mention that though both accused had admitted the genuineness and correctness of the discharge summary Ex. PW2/A in their statement under Section 294 CrPC, however, mere admission of the document by the accused persons does not mean that the offence has been proved by the prosecution. The discharge summary, even admitted, did not point towards commission of offence under Section 323 IPC by the accused persons.

57. Let us now examine the culpability of accused persons qua each offence.

58. In view of the above discussion and the material available on record,

it has been proved by the prosecution beyond reasonable doubt that when the complainant demanded back his cheque from accused no. 2, he got provoked and apprehended him and both accused latched the main door of downstairs. The testimony of the complainant has been consistent and could not be demolished, as observed earlier. There has been a voluntary obstruction of the complainant which prevented him from going out of the chamber of accused no. 1. It is clear that the accused persons could not controvert the allegations of wrongful restraint levelled by the complainant in view of the evidence adduced and material available on record. Thus, accused B.S. Arora and accused Ajay Srivastava are liable for offence under Section 341/34 IPC.

59. It can be further observed that the complainant while being held by the accused persons in chamber of accused no. 1, was threatened that upon non signing of the pronote, which is a valuable security, he will be beaten and to avoid any quarrel or beating, the complainant signed the alleged pronote and was thereafter released. Such pronote was then delivered by the complainant to the accused. The manner and circumstances in which the pronote was signed under extortion has been proved beyond reasonable doubt by the prosecution. It is clear that the complainant was intentionally put in fear of hurt or injury to sign the pronote against his will. Moreover, the pronote was got signed from the complainant for wrongful gain to the accused persons as the accused persons have not shown any reason for which they were entitled to money as mentioned in the pronote. Further, such act of the accused persons entailed a threat of injury to the body of the complainant and it led him to sign the pronote which he was not legally bound to do but signed the pronote to avoid the beatings. Thus, accused B.S. Arora and accused Ajay Srivastava are liable for offence under Section

384/506(Part I)/34 IPC.

60. It is also pertinent to mention that accused B.S. Arora and accused Ajay Srivastava had committed the offences under Section 341/384/506 IPC in furtherance of their common intention and thus, both accused are liable for such acts in the same manner as if it were done by them alone for the purpose of Section 34 IPC.

61. For proving the offence under Section 323 IPC, it was first and foremost required by the prosecution to prove that the accused persons had committed hurt upon the complainant. To prove the offence, the prosecution could not bring any cogent medical evidence to prove that hurt and consequent injury had been caused to the complainant due to the act of the accused persons. Thus, the prosecution has failed to prove the offence under section 323 IPC against the accused B.S. Arora and accused Ajay Srivastava and thus, the accused persons are not liable for offence under Section 323/34 IPC.

62. As such, prosecution has successfully brought home the guilt of accused B.S. Arora and accused Ajay Srivastava for the offences punishable u/s 341/384/506(Part I)/34 IPC through the testimonies of examined witnesses and further has established the ingredients of offences alleged against the accused in the present matter beyond reasonable doubt, however, the prosecution has been unable to successfully bring home the guilt of accused B.S. Arora and accused Ajay Srivastava for the offence punishable u/s 323/34 IPC beyond reasonable doubt.

63. In view of the evidence adduced, documents put forth and arguments advanced by the parties and further in view of the above discussion, the court is of the considered opinion that the accused B.S. Arora and accused Ajay Srivastava are guilty of offence punishable 341/384/506(Part I)/34 IPC and accordingly, both accused are hereby convicted for the offence punishable under Section 341/384/506(Part I)/34 IPC and the accused B.S. Arora and accused Ajay Srivastava are not guilty of offence punishable 323/34 IPC and accordingly, both accused are hereby acquitted for the offence punishable under Section 323/34 IPC.

64. Both accused shall be heard on the point of sentence.

Copy of the judgement be provided to both convict, free of cost.

**Announced in the
court on 26.09.2023**

**(Kapil Gupta)
Metropolitan Magistrate - 07
New Delhi District, Patiala House Courts,
New Delhi**