



2026:DHC:9251



\$~

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

%

Reserved on: 13.10.2026**Pronounced on: 16.10.2026****Uploaded on: 16.10.2026**# **CNR No. DLHC010098092004**

+ CRL.A. 564/2004 & CRL.M.A. 6740/2004 (suspension of sentence)

VIJAY @ VEERU

.....Appellant

Through: Mr. Rajbir Singh Sagar,
AdvocateAppellant is also present in
person

versus

STATE

....Respondent

Through: Mr. Satinder Singh Bawa, APP
with SI Rahul Ranjan, PS Harsh
Vihar**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. Appellant has preferred the present appeal under Section 374 of the Code of Criminal Procedure, 1973 [**“Cr.P.C.”**] read with Section 482 Cr.P.C., impugning the judgment dated 29th July, 2004 [**“impugned judgment”**] and order on sentence dated 30th July, 2004, passed by the learned Additional Sessions Judge, Karkardooma Courts [**Trial Court**] in case FIR No. 243/2002 registered under Sections 308/323/34 of the Indian Penal Code, 1860 [**“IPC”**] at Police Station Dilshad Garden [**PS**].

**BRIEF FACTS:**

2. Briefly stated, the case of the prosecution is that on 20th September, 2002, an information was received at PS Dilshad Garden regarding a quarrel behind the house of Master Balbir Singh, MLA in Khera Village near GT Road. On this information, DD No. 15-A (Ex. PW-4/A) was recorded and was marked to SI Rajesh Dangwal (PW-6). On receipt of the same, SI Rajesh along with Constable Chaman Lal (PW-4) reached at GTB Hospital, where, he obtained the MLC of injured Arvind Goswami (PW-3) and Sharvan Goswami (PW-5). The doctor had opined the nature of injuries to be “simple-blunt” on the MLC of Arvind Goswami, while the MLC of Sharvan Goswami was kept under observation. The MLC of Sharvan Goswami was deposited at GTB Hospital for awaiting the result. DD No. 15-A dated 20th September, 2002 was therefore kept pending.

3. Same day, that is, 20th September, 2002, PW-6 recorded the statement of Dheeraj Goswami (PW-2), wherein, he narrated that at about 8.30 pm, he was going to the house of his friend Manish, and while passing through a narrow lane at Village Khera, he saw that a child was sitting there while stretching his legs. He asked the child to fold his legs, but he did not do so, and therefore, he jumped over his legs. Appellant Vijay and co-accused Kundan, Ajay and Jitender, who were known to him, were also standing nearby. Kundan asked him as to why he jumped over the legs of the child, upon which, he told him that he had asked the child to remove his legs, but he did not do so, and upon this, Kundan and other boys started beating and grappling



with him. He somehow managed to escape and ran towards his house and told this fact to his brother Arvind and cousin Sharvan. Thereafter, all three of them came in the narrow lane to confront the appellant and the co-accused. However, Kundan caught Sharvan and appellant Vijay @ Veeru threw stone on Sharvan, which hit him on his head and blood started oozing out. Co-accused Ajay and Jeetu gave beatings to Arvind. On hearing the commotion, a neighbour Vinod Kumar (PW-11) came there. The appellant and the co-accused ran away from the spot. PW-3 and PW-5 were taken to GTB Hospital for treatment.

4. On 06th November, 2002, the MLC result of PW-5 was obtained. The doctor gave the opinion that the injuries were grievous in nature. FIR was therefore registered under Section 325/34 IPC. During investigation, site plan was prepared. On the directions of the Additional DCP, Section 308/34 IPC was also invoked. After completing the investigation charge sheet was filed against the appellant and co-accused under Section 323/308/34 IPC.

5. Charges were framed against the appellant and the other three co-accused under Sections 308/34 IPC and 323/34 IPC, to which, they all pleaded not guilty and claimed trial.

6. In order to prove its case, prosecution examined 12 witnesses, including the three injured persons namely Dheeraj Goswami (PW-2), Arvind Goswami (PW-3) and Sharvan Goswami (PW-5), neighbor Vinod Kumar (PW-11), mother of PW-2 and 3 (PW-9), doctors who examined the injured (PW-10 and 12) and SI Rajesh Dangwal, IO of the case (PW-6).



7. Statements of the accused persons were recorded under Section 313 Cr.P.C., wherein, they denied all the incriminating evidence against them and claimed that they were innocent. They stated that they were lifted from their house by the police and were falsely implicated in the case. They refused to lead defence evidence.

8. Upon conclusion of trial, the Trial Court, *vide* judgment dated 29th July, 2004, convicted the appellant and the co-accused persons under Section 323/34 IPC. Additionally, the appellant was also convicted under Section 308 IPC. *Vide* order dated 30th July, 2004, appellant was sentenced to undergo Rigorous Imprisonment for a period of three years with fine of Rs. 1000/-, in default, three months Rigorous Imprisonment for the offence under Section 308 IPC. He was further sentenced to undergo Rigorous Imprisonment for six months for the offence punishable under Section 323/34 IPC. However, the other three co-accused, who were convicted under Section 323/34 IPC, were granted the benefit of Probation of Offenders Act.

9. Feeling aggrieved, appellant Vijay has challenged his conviction and sentence by filing the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

10. The learned counsel for the appellant submitted that the conviction under Section 308 IPC was unsustainable. It was argued that the learned Trial Court erred in not appreciating the evidence in proper perspective and the impugned judgment is based on conjectures, surmises and material irregularities.



11. It was further submitted that the learned Trial Court failed to consider the delay of approximately one and a half months in the registration of the FIR, inasmuch as, the incident occurred on 20th September, 2002, whereas, the FIR was registered on 06th November, 2002.

12. It was further argued that the star witness of the prosecution, that is, PW-5 Sharvan Goswami, who had suffered injuries during the incident, could not identify the accused including the appellant and the alleged witness, that is, PW-11 Vinod Kumar, also did not support the prosecution case. It was further argued that the incident allegedly took place in the night in a *gali* which was hardly 3-4 feet wide, thereby, making it impossible to see the face of the person who caused injuries.

13. It was argued that the judgment of conviction has been recorded despite material contradictions and deficiencies in the prosecution evidence and the prosecution evidence was not scrutinized in accordance with law.

14. The learned counsel further argued that the incident took place at the spur of the moment in which a single blow was given in a sudden fight, without premeditation, motive or ill-will and the doctor did not opine that the injury was sufficient or was likely to cause death. It was further submitted that there is no recovery of the weapon/stone either from the spot or from the appellant. Reliance was placed upon the judgment of **Man Singh v. State NCT of Delhi**, 2016 SCC OnLine Del 1050 to contend that the present case does not warrant the invocation of Section 308 IPC and therefore the impugned



judgment, convicting the appellant under Section 308 IPC, is liable to be set aside.

15. It was also contended that the appellant had been treated differently from the other co-accused persons who were granted the benefit of probation and that he also deserves the similar relief. It was further argued that the appellant is a poor person, having three school going daughters, who are dependent upon him. Accordingly, the learned counsel prayed that conviction under Section 308 IPC be set aside and the appellant be extended the benefit of probation.

SUBMISSIONS ON BEHALF OF THE STATE:

16. Mr. Bawa, learned APP for the State, submitted that prosecution has been able to establish the appellant's involvement through the testimonies of the material witnesses, particularly, PW-2 Dheeraj Goswami and PW-3 Arvind Goswami, who had duly identified the appellant as one of the assailants.

17. It was contended that the testimonies of PW-2 and PW-3 are consistent, straight-forward and cogent and nothing has been brought out in their cross examination which may come to the rescue of the appellant.

18. With regard to the delay, it was submitted that the delay stands adequately explained by the Investigating Officer (PW-6), who deposed that the complaint was kept pending until the receipt of the final medical opinion regarding the nature of injuries suffered by Sharvan. It was argued that the opinion of the doctor on the MLC Ex. PW-6/B confirms that the injuries suffered by PW Sharvan were



grievous in nature and PW-12 Dr. Sunil identified the handwriting and signatures of Dr. Zahirul Islam and Dr. S.K. Jain on the MLC Ex. PW-6/B.

19. It was argued that the finding of the learned Trial Court is in consonance with the requirement of Section 308 IPC and therefore there is no illegality or perversity in the findings arrived at by the learned Trial Court and the appeal is therefore liable to be dismissed.

ANALYSIS AND REASONING:

20. The Court has carefully considered the rival submissions made and have perused the material on record.

21. PW-2 Dheeraj Goswami, PW-3 Arvind Goswami, PW-5 Sharvan Goswami and PW-11 Vinod Kumar are the most material witnesses of the occurrence, they being the eye-witnesses of the occurrence. Admittedly, PW-5 Sharvan and PW-11 Vinod have not supported the prosecution case and have turned turtle. PW-5 Sharvan Goswami stated that he did not know any of the accused persons, present in Court, namely, Ajay, Vijay, Jitender and Kundan and that he saw them only for the first time in Court and that someone had hit him with an unknown object on his head, as a result of which, he suffered injuries and became unconscious. He was cross examined by the learned APP with the permission of the Court, but in such cross examination, nothing could be elicited, which may support the prosecution version.

22. PW-11 Vinod Kumar deposed that when he reached the narrow lane (*patli gali*), he saw that a quarrel was going on with Dheeraj,



Arvind and Sharvan. However, he clarified that Dheeraj, Arvind and Sharvan were not beaten in his presence. According to him, Sharvan, who was bleeding, had told him that Veeru had picked up quarrel with him and caused injuries to him. He further stated that the mother of Dheeraj came at the spot and took the injured to GTB Hospital. This witness was also declared hostile and was cross examined by the learned APP with the permission of the Court, but nothing incriminating could be elicited during such cross examination, which may help the prosecution. His testimony that Sharvan had told him that Veeru had caused him injuries is hearsay evidence and is therefore not admissible in evidence.

23. It is thus evident that the testimonies of two star witnesses namely Sharvan Goswami and Vinod Kumar are of no help in establishing the guilt of the appellant.

24. However, the other two witnesses namely Dheeraj Goswami (PW-2) and Arvind Goswami (PW-3) have duly supported the prosecution case. PW-2 deposed that on 20th September, 2002, at about 8.30 pm, when he was passing through a narrow lane (*patli gali*) of Village Khera, a child was sitting on the way, extending his feet. He asked the child to fold his legs, but he refused. He then walked scaling over his legs. At that time, accused Veeru @ Vijay Kumar, Kundan, Ajay, Jitender @ Jeetu and some other boys were standing there. Accused Kundan uttered “*Are you not able to see and questioned as to why he scaled over the legs of the child*”. On this, he told him that he had already told the child to remove his legs from the way, but he did



not do so. Then, accused Kundan stated “*I will see you*” and started manhandling him. He and other accused persons then gave beatings to him. He somehow managed to escape and rushed to his house and told about the occurrence to his brother Arvind and cousin Sharvan. Thereafter, he along with Arvind and cousin Sharvan rushed at the spot in order to admonish the accused persons, but as soon as they reached in the narrow lane, all the accused persons started beating them. Accused Kundan caught Sharvan and accused Veeru hit with stone, which was lying there on the head of Sharvan, as a result of which, blood started oozing from his head. He further deposed that Arvind was beaten up by accused Arvind and Jeetu.

25. In cross examination, PW-2 admitted that the lane was approximately 3 to 4 feet wide and it was dark at that time, but maintained that the assailants and objects used were visible. He further stated that nothing was recovered from the accused in his presence.

26. PW-3 Arvind Goswami deposed that his brother Dheeraj returned home in a perplexed condition and informed that he had been beaten by appellant and the co-accused, whereupon, he, Dheeraj and Sharvan went at the spot, where, they were assaulted by the accused persons. He deposed that Kundan caught hold of Sharvan, while Vijay @ Veeru struck Sharvan on his head with a stone, as a result of which, blood started oozing from the said injury. He deposed that upon hearing their alarm, their neighbourer Vinod Kumar and other persons arrived, following which, the accused fled away. During cross



examination, PW-3 admitted that it was dark at the time of incident, but maintained that the assailants were visible.

27. During arguments, the learned counsel for the appellant failed to point out any inconsistency or contradiction in the testimonies of PW-2 and PW-3. Both these witnesses have withstood the test of cross examination. Their testimonies are consistent and cogent. There is nothing in their cross examination which may suggest that there was any previous enmity or ill-will between the witnesses and the accused and therefore there is no reason why PW-2 and PW-3 would depose falsely against the appellant and the co-accused. Thus, there is no reason to disbelieve the testimonies of PW-2 and PW-3.

28. Moreover, the testimonies of PW-2 and PW-3 find corroboration from the MLCs Ex. PW-6/A and Ex. PW-6/B. The MLC Ex. PW-6/A proves that PW-3 Arvind Goswami suffered simple blunt injuries on his person, while MLC Ex. PW-6/B proves that PW-3 Sharvan Goswami suffered grievous injuries on his person. The prosecution case is not weakened merely because the other two eye witnesses of the occurrence have turned hostile. Although, PW-5 did not support the prosecution version regarding the identity and specific role of the assailants, his testimony does not completely demolish the prosecution case, particularly to the extent that it lends support to the occurrence of quarrel in the lane. On the basis of the testimonies of PW-2 and PW-3, it stands proved that the appellant and co-accused, in furtherance of their common intention, assaulted and caused injuries to PW-3 Arvind Goswami and PW-5 Sharvan Goswami.



29. Admittedly, there is a delay of about 47 days in the registration of the FIR, but the same is not fatal to the prosecution case, inasmuch as, the explanation furnished by the Investigating Officer that the complaint of Dheeraj Goswami was kept pending since the final result on the MLC of Sharvan Goswami with regard to nature of injuries was awaited. Once the final result about the nature of injury was obtained on 06th November, 2002, *rukka* Ex. PW-6/C was prepared on the statement of Dheeraj Goswami and FIR was registered. Importantly, the statement of Dheeraj Goswami was immediately recorded on the same day on which the occurrence took place, thus there appears to be no chance of manipulation or embellishment in the FIR. That being so, the prosecution case cannot be thrown aside only on the ground of delay in registration of the FIR.

30. The next question for consideration is as to whether prosecution has been able to make out a case under Section 308 IPC in respect of the injuries suffered by Sharvan Goswami. The provisions contained in Section 308 IPC postulate doing an act with such intention or knowledge and under such circumstances that if one by that act causes death, he would be guilty of culpable homicide not amounting to murder. This Court in the case of **Man Singh** (*supra*) and the Supreme Court in the case of **Bishan Singh v. State**, (2007) 13 SCC 65, held that before an accused can be held to be guilty under Section 308 IPC, it is necessary to arrive at a finding that the ingredients thereof, namely, requisite intention or knowledge was existing. There cannot be any doubt whatsoever that such an intention or knowledge on the



part of the accused to cause culpable homicide is required to be proved. Whether or not the accused had the requisite intention or knowledge has to be determined on the facts and circumstances of each case. The nature of weapon used, the portion of the body in which the injuries are caused, the nature of injury and the conduct of the accused, at, before or after the occurrence are the determinative factors in ascertaining the intention or knowledge.

31. In the present case, as even observed by the learned Trial Court itself, the incident arose at the spur of the moment when PW-2, PW-3 and PW-5 had gone to confront the appellant and the co-accused persons for causing injury to PW-2. Admittedly, there was no premeditation or planning to cause injuries to Sharvan Goswami and Arvind Goswami. In fact, if the evidence is to be believed, the injury was caused to PW-5 Sharvan Goswami with a stone, which was picked up from the spot itself. Although, PW-2 and PW-3 referred to the use of a stone, no such stone was recovered either at the instance of the appellant or from the place of occurrence. The absence of recovery of weapon, by itself, may not prove fatal to the prosecution case, but the nature of weapon used may help in determining the intention of the accused persons. There is no evidence on record as to what was the size of the stone or whether it was blunt or sharp-edged, and therefore in the absence of such evidence, it cannot be ascertained whether the weapon used was a dangerous weapon. The doctor, in the present case, has also not stated that the injuries were sufficient in the ordinary course of nature to cause death.



32. The manner in which the incident took place, does not suggest that the appellant had an intention or knowledge of inflicting injuries which would attract provision of Section 308 IPC. Having regard to the same, I am not persuaded to hold that the appellant could be convicted for the offence punishable under Section 308 IPC. Therefore, considering the facts and circumstances of the case and the fact that the nature of injury inflicted upon the person of Sharvan Goswami being grievous in nature, and the one suffered by Arvind Goswami being simple, the conviction ought to have been recorded under Section 323/34 and Section 325 IPC.

33. Hence, in view of my aforesaid discussion, the appeal deserves to be partly allowed. The conviction of appellant under Section 308 IPC is hereby set aside. He is convicted under Section 323/34 and Section 325 IPC.

34. On the point of quantum of sentence, the learned counsel argued that appellant is a first time offender and has clean antecedents. He is a poor person, having three unmarried daughters, who are dependent upon him. Claiming parity with the co-accused persons, the appellant prays for release on probation.

35. The offence under Section 325/323 IPC, does not prescribe any mandatory minimum sentence. The sentence provided under the aforesaid provisions is flexible, leaving discretion with the Court to impose imprisonment for a term which may extend to seven years and fine. The benefit of probation can be extended wherever the statute does not specifically exclude its operation or prescribe a compulsory



2026:DHC:9251



minimum punishment and therefore in the absence of such a restriction under Section 325/323 IPC, the Court has discretion to extend the benefit of probation to the appellant if the circumstances of the case so justified. However, before such an order is passed, it is deemed appropriate to call for a Social Investigation Report from the Probation Officer.

36. Registry is therefore directed to requisition the Social Investigation Report of the appellant from the Probation Officer and place the same on record on or before the next date.

37. List on 04th November, 2026 for consideration of report and for further orders.

RAVINDER DUDEJA, J.

OCTOBER 16, 2026/na