



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

% Date of Decision: 03.09.2025

+ **CRL.A. 57/2017**

KISHAN LAL & ORS .....Appellants

Through: Mr. Rohan Kanhai, Advocate.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Pradeep Gahalot, APP for State  
with SI Rajesh Kumar, P.S. Vijay  
Vihar.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT (ORAL)**

1. By way of present appeal, the appellants seek to assail the judgment dated 17.12.2016, whereby the appellants have been convicted for the offence punishable under Sections 308/34 IPC; appellant/*Ashok* has also been convicted for the offence punishable under Section 341 IPC. Vide order on sentence dated 22.12.2016, appellant/*Kishan Lal* has been sentenced to undergo RI for 1 year for the offence under Section 308/34 IPC with fine of Rs.2,000/- and in default of payment of fine to undergo SI for 1 month; appellants/*Ashok Kumar* and *Sushil Kumar* have been sentenced to undergo RI for 2 years each for the offence under Section 308/34 IPC with fine of Rs.5,000/- each and in default of payment to fine to undergo SI for 2 months each; appellant/*Ashok Kumar* has been also sentenced to undergo SI for 1 month for the offence under Section 341 IPC. All the sentences have



been directed to run concurrently. Benefit of Section 428 Cr.P.C. has also been given.

2. Notably, the factum of death of *Ashok Kumar*/appellant No. 3 on 09.04.2025 has been verified and the present appeal qua him stands abated. The sentence of remaining two appellants has been suspended.

3. Appellants faced trial for the offence punishable under Sections 308/341/34 IPC in the proceedings arising out of FIR No. 488/11 registered at PS. Vijay Vihar, Delhi. As per the case of prosecution, the incident pertains to 21.12.2011 when it is alleged that one *Dev Kishore* and his father *Om Prakash* after taking lunch were going on Rithala Road when the appellant No. 3/*Ashok Kumar*/(now deceased) stopped their way and started beating *Om Prakash* by saying “24.12.2011 ko teri court me taarikh hai, court mein faisla baad mein hoga, main abhi faisla kar deta boon”. The other two appellants i.e., *Kishan Lal* and *Sushil Kumar*, who happen to be father and brother of *Ashok Kumar* respectively also reached there. *Ashok Kumar* picked up a brick and gave a blow on the head of *Om Prakash* (PW2), *Kishan Lal* gave beatings to him with a stick and *Sushil* kicked him along with landing fist blows. When *Dev Kishore* tried to save his father, he was threatened, whereafter all the appellants ran away.

4. *Om Prakash* being injured appeared as PW2 and deposed that on 21.12.2011, the appellant/*Ashok Kumar* gave brick blow on his head. *Kishan Lal* gave beatings to him with stick and *Sushil Kumar* also hit him with kicks and fist blows.

In cross-examination, he admitted that an FIR No. 487/2011 was registered against him on the complaint of appellant/*Ashok Kumar*. He denied the suggestion that the said FIR was registered as he had given



beatings to *Ashok Kumar*. He also admitted that there are many cases pending between the parties. Though a suggestion was given to him that no such incident had taken place, he denied the same.

5. *Dev Kishore* was examined as PW3. His testimony is cumulative to the testimony of *Om Prakash*. In cross-examination, a suggestion was put that he alongwith *Om Prakash*, *Santosh*, *Rahul*, *Pankaj*, *Santosh* and *Pintoo* had attacked appellant/*Ashok Kumar* three days prior to the present incident i.e., on 21.12.2011 with arms, sticks, bricks and stones which was denied. He further denied that it had resulted fractures in the right leg of *Ashok*. He further denied that *Ashok* received two fractures on the left leg and four fractures in his right hand as well as two fractures in his left hand. He claimed ignorance that *Ashok* was hospitalized in ICU, Brahm Shakti Hospital till 17.01.2012.

6. MLC of *Om Prakash* was proved through Dr. M. Das, CMO, SGM Hospital, Delhi who was examined as PW5. There was CLW at frontal region of scalp of size 2x 0.5x 0.25 cm and the injury was simple.

7. The Trial Court after considering the testimony of PW2 *Om Prakash* and PW3 *Dev Kishore* concluded that even though the injuries on *Om Prakash* were opined to be simple in nature however, the same was given on the vital part of the body i.e., frontal region (head). Trial Court while reaching its conclusion also noted that the incident stands proved as cross FIR being FIR No. 478/2011 was also registered at the instance of accused persons. Finding the testimony of the injured to be *inter se* corroborative to each other as well as further corroborated by the MLC, convicted the appellants for the offence under Sections 308/34 IPC. However, other than the appellant/*Ashok*, the rest of the appellants were acquitted of the charge



under Section 341 IPC.

8. Before this Court, learned counsel for the appellants has contended that testimonies of the witnesses are not truthful, however, on a careful perusal of the same, this Court finds no ground to interfere with the findings of the Trial Court and as such the conviction of the appellants is upheld. On earlier occasion, learned counsel for the appellants have prayed that considering the age of the appellants, their case be considered under the Probation of Offenders Act, 1958.

9. Probation Officer's report dated 02.09.2025 signed by Mr. Arun Kumar, Probation Officer, Rohini Courts, Delhi has been handed over in Court which is taken on record. The report mentions that the appellant/*Kishan Lal* (83 years, married), resides at A1/21, Harsh Dev Park, Budh Vihar, Phase II, New Delhi along with his son appellant/*Sushil*, daughters-in-law and grandchildren. He is 12<sup>th</sup> pass and a retired Army personnel and living with his family. He is getting pension of Rs.79,000/- per month. The family's economic condition is described as sound and stable. The appellant is reported to be physically and mentally fit, of normal social behaviour, and without harmful habits, stating that he neither smokes nor drinks and prefers to spend his time with family. His neighbours, when interviewed, described him as a man of good moral conduct, never known to have been involved in any controversy. His family members also expressed that the incident has been a misfortune for him, and described him as a simple, family-oriented person devoted to his responsibilities. The probation officer's assessment notes that the appellant/*Kishan* has a stable family background, a positive community image, and bears the responsibility of sustaining his household.



10. Another probation report dated 02.09.2025 signed by Mr. Arun Kumar with respect of appellant/ *Sushil Kumar* has been handed over in Court which is also taken on record. The report mentions that the appellant/*Sushil Kumar* (51 years, married), resides along with his father ( appellant/*Kishan Lal*), sister-in-law, wife and his children at the same residence. He is working as an Uber Taxi Driver and earning Rs.25,000/- per month. The family's economic condition is described as sound and stable. The appellant is reported to be physically and mentally fit, of normal social behaviour, and without harmful habits, stating that he neither smokes nor drinks and prefers to spend his time with family. His neighbours, when interviewed, described him as a man of good moral conduct, never known to have been involved in any controversy. His family members also expressed that the incident has been a misfortune for him, and described him as a simple, family-oriented person devoted to his responsibilities. The probation officer's assessment notes that the appellant/*Sushil Kumar* has a stable family background, a positive community image, and bears the responsibility of sustaining his household.

11. Status Report has also been handed over which is taken on record as per which, appellants are found involved in another case being FIR No. 139/2008 registered under Sections 308/323/34 IPC wherein they have been acquitted vide judgment dated 29.11.2016. Appellant/*Kishan Lal* who is statedly aged about 83 years is also found involved in another case being FIR No. 152/2010 registered under Sections 323/325/341/34 IPC at P.S. Vijay Vihar which is at the stage of prosecution evidence.

12. As noted above, appellant/*Kishan Lal* is aged about 83 years old and his son i.e. appellant/*Sushil Kumar* is 51 years old. They have shown



2025:DHC:7809



remorse for their conduct. Considering the totality of the facts and circumstances, this Court deems it fit to direct that the appellants are granted the benefit of probation on them furnishing a bond in the sum of Rs.10000/- each with one surety for good behavior for a period of one year before the learned trial court within four weeks from today. In case of non-compliance, the sentence awarded by the trial court shall remain in force.

13. The appellant shall remain under the supervision of the Probation Officer concerned for a period of one year, and shall report before the Probation Officer once every month. It is made clear that in the event of any breach of the conditions of probation or involvement in any other offence during this period, the benefit granted under this order shall stand revoked, and the appellants shall be liable to undergo the remaining portion of the sentence, as awarded by the Trial Court.

14. The appeal is accordingly disposed of in the above terms.

15. A copy of this order be communicated to the Trial Court as well as the concerned Jail Superintendent.

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**SEPTEMBER 3, 2025**

*ga*