



2025:DHC:9824



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

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Date of Decision: 06.11.2025

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CRL.A. 461/2016

DAL CHAND

.....Appellant

Through: Ms. Inderjeet Sidhu, Advocate (DHCLSC), Mr. Lalit Choudhary, Mr. Aditya Ranjan, Advocates with appellant in person(M:9810587998).

versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State with SI Vinay PS Neb Sarai, Delhi.

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been filed under Section 374(2) Cr.P.C. assailing the judgment dated 28.03.2016 and the order on sentence dated 29.03.2016 passed by the learned ASJ-03, South District, Saket Courts, New Delhi, in Sessions Case No. 71/2015 arising out of FIR No. 254/2013 registered at P.S. Neb Sarai.

2. Vide the order on sentence the appellant was convicted for the offence punishable under Section 308 IPC and sentenced to undergo SI for a period of 3 years alongwith fine of Rs.1,00,000/-, in default whereof to undergo SI for 6 months, and for the offence punishable under Section 323 IPC, he was directed to undergo SI for a period of 1 year alongwith fine of Rs.1,000/- in default whereof to undergo SI 1 6 month. The benefit of Section 428 Cr.P.C.



was granted to the appellant and both the sentences were directed to run concurrently.

During the pendency of the present appeal, the sentence of the appellant was suspended by this Court, vide order dated 11.05.2016, and he was released on bail.

3. Briefly put, on 08.06.2013, the injured, Naveen Sharma (PW-2), a student of Class XII, was standing at *Shanti Chowk* along with his friends *Chander Pal* (PW-5) and *Amit* (PW-6). At that time, 'X' (JCL) arrived and demanded the mobile phone of one of Naveen's friends and attempted to snatch it. When PW-2 objected, 'X' started quarrelling with him. During the quarrel, the appellant, who is the father of 'X', also reached the spot and allegedly hit PW-2 on the head with a brick. PW-2's elder brother, *Narayan Sharma*, arrived at the scene and informed the police at number 100. The PCR officials reached the spot and took Naveen first to AIIMS Trauma Centre, from where he was referred to Safdarjung Hospital and subsequently to Batra Hospital. Information regarding the incident was recorded at Police Station Neb Sarai vide DD No. 53-A.

4. In support of its case, the prosecution examined 10 witnesses to prove its case. The most material among them was the injured, *Naveen*, who was examined as PW-2. *Chander Pal* and *Amit*, both eyewitnesses, who deposed on similar lines stating that the appellant struck the injured with a brick, were examined as PW-5 and PW-6, respectively. The medical witnesses included PW-10, who examined *Naveen* at AIIMS Trauma Centre, and prepared the MLC and PW-1, who treated him at Batra Hospital. The remaining witnesses were formal in nature and deposed regarding various aspects of the investigation. The remaining witnesses were formal in nature



and deposed as to various aspects of the investigation.

5. In his statement recorded under Section 313 Cr.P.C, the appellant claimed false implication. He stated that he was not present at the spot at the time of the incident and was infact admitted to Maa Sukhdevi Charitable Diagnostic Ultrasound Centre, where he remained admitted from 06.06.2013 to 10.06.2013. In support of his defence, S.R. Saram, was examined as DW-1.

6. A perusal of the record indicates that the testimony of PW-2 is consistent, cogent, and credible, and stands corroborated by PW-5 and PW-6. Their statements are further supported by the medical evidence, as the MLC records that PW-2 sustained grievous injuries caused by a blunt weapon. PW-1 also confirmed a fracture of the skull, while PW-5 suffered a simple injury. The appellant's defence of false implication and alibi remained unsubstantiated. It stands proved that the appellant caused grievous injury to PW-2 without any provocation. The manner in which the injury was inflicted on the head of PW-2 clearly reflects the appellant's intention to cause such harm to him. There was no prior enmity between the appellant and the witnesses, nor was any evidence led to suggest otherwise. In view of the above, the conviction of the appellant under Section 308/323 IPC is upheld.

7. Learned counsel for the appellant, on instructions from the appellant who is present in Court and has been identified by the Investigating Officer, has handed over a self-attested copy of his gate pass, which is taken on record, submits that the appellant does not wish to press the appeal on merits and confines his prayer to seeking release on probation. It is submitted that the appellant has duly deposited the fine amount, as reflected in the Trial



Court's order dated 23.05.2016. It is further submitted that the appellant is a first-time offender, has clean antecedents, it is prayed that the benefit of section 4 of the Probation of Offenders Act, 1958 be extended to him

8. Learned APP for the State has handed over a status report, as per which the fact regarding the absence of any other criminal involvement of the appellant stands duly verified.

9. Pursuant to this Court's directions, the Social Investigation Report of the appellant has been received from Ms. *Shivani Bist*, the Probation Officer, Saket Courts, and is taken on record. As per the report, the appellant is 53 years of age, illiterate, and has been residing with his daughter at K-46, Bandh Road, Sangam Vihar, New Delhi. He has been suffering from major paralysis since 2021. Prior to his illness, he used to work as a tailor earning Rs. 600 per day. The appellant's family consists of two sons and one daughter. His elder son lives separately with his own family and does not extend any support or care to the appellant. While, his younger son is presently in judicial custody at Mandawali Jail, the appellant lost his wife, *Dharmpalini* on 15.01.2025, and has since been living under difficult circumstances. Due to paralysis, he is unable to use the left side of his body, cannot walk independently, and is dependent on others for his basic needs, rendering him financially and physically vulnerable. The appellant has been under continuous treatment at an Ayurvedic hospital. The report further records that the appellant maintains a normal social behaviour, and is viewed positively by his neighbours, who have described him as a person of good character and that he is highly respected in the community. The appellant has been facing trial since 2013 and has no previous criminal antecedents or institutional record, and there is no report of involvement in



any other offence. He has expressed remorse for the incident, assured that he will maintain good behaviour, and affirmed his commitment to live as a law-abiding citizen.

10. The underlying object of releasing offenders on probation is to facilitate their reintegration into society as law-abiding citizens, fostering self-reliance and aiding in their reformation. A testament to the importance of this provision is that the Supreme Court in Lakhvir Singh & Ors. Vs. State of Punjab & Anr., reported as (2021) 2 SCC 763, has extended the benefits of the Probation Act even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC, since IPC was enacted before the Probation Act came into being. The relevant extract is reproduced hereunder:-

"16. ... A more nuanced interpretation on this aspect was given in CCE v. Bahubali¹⁵. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.¹⁶ It is in this context, it was observed in State of M.P. v. Vikram Das⁶ that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab¹⁷ are in the same context.

...
18. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence."

11. Pertinently, in the present case, the offence under Section 308/323 IPC does not prescribe any mandatory minimum sentence. The punishment



provided under this provision is flexible, leaving discretion with the Court to impose either imprisonment or fine, or both. It is well settled that the provisions of the Probation of Offenders Act, 1958 are to be read harmoniously with the provisions of the Indian Penal Code, and that the benefit of probation can be extended wherever the statute does not specifically exclude its operation or prescribe a compulsory minimum punishment. In the absence of such restriction under Section 308/323 IPC, this Court retains full discretion to extend the benefit of probation to the appellant if the circumstances of the case so justify.

12. It is also undisputed that the appellant has no other criminal involvement or pending case. The fine amount as directed by the Trial Court, already stands paid. The nominal roll of the appellant dated 16.10.2025, records that the appellant has undergone more than 1 month, his conduct has been noted as satisfactory, and his sentence remained suspended during the pendency of the present appeal.

13. Having regard to the nature of the offence, the absence of any criminal antecedents, and the overall findings of the Social Investigation Report, this Court is persuaded to adopt a reformative approach. The appellant has been living peacefully in society and is presently suffering from medical ailments. The Probation Officer's report further affirms his good conduct, normal social behaviour, and positive outlook towards reformation.

14. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the substantive sentence of imprisonment imposed upon the appellant is modified to the extent that he shall be released on probation of good conduct under Section 4 of the



Probation of Offenders Act, 1958, upon furnishing a probation bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court within four weeks from today. The appellant shall maintain peace and good behaviour and shall not commit any offence during the period of probation.

15. The appellant shall remain under the supervision of the concerned Probation Officer for a period of six months and shall report before the Probation Officer once every month. In case 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 appellant shall be liable to undergo the sentence as awarded by the Trial Court.

16. The appeal and all pending applications, if any, stand disposed of in the above terms.

17. A copy of this judgment be communicated to the Trial Court, the concerned Probation Officer, and the concerned Jail Superintendent for information and compliance.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 6, 2025/*rd*