



2025:DHC:11734



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

% Date of Decision: 18.12.2025

+ **CRL.A. 813/2018**

SANJAY KUMARAppellant

Through: Mr.Shivendra Singh, Ms.Prakriti
Rastogi, Ms.Aryama Singh, Advocates with
appellant in person

versus

STATE (NCT OF DELHI)Respondent

Through: Ms.Shubhi Gupta, APP for State with
SI Pankaj

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

JUDGMENT (ORAL)

1. By way of present appeal, the appellant seeks to assail the judgement of conviction dated 16.04.2018 and order on sentence dated 19.04.2018 passed by District & Sessions Judge, North-East District, Karkardooma Courts, Delhi, in SC no. 44835/2015 arising out of FIR no. 258/2010 registered under Sections 308 IPC at P.S. Jyoti Nagar, Delhi.

2. Vide the impugned order on sentence, the appellant is sentenced to undergo RI for a period of 2 years alongwith fine of Rs.5,000/-, in default thereof would undergo SI for a period of 3 months for the offence punishable under Section 308 The benefit of Section 428 Cr.P.C. was granted to the appellant.

The sentences of the appellant was suspended during pendency of the



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present appeal by this Court vide order dated 26.11.2018.

3. Briefly put, the case of the prosecution is that on 03.06.2010, at about 9:00 PM, opposite the country-made liquor shop at Meet Nagar, Loni Road, the appellant inflicted a brick blow on the head of *Deepak Jain* and alongwith three other persons, also caused injuries to the complainant Mohd. Anis by way of fist and kick blows.

4. In support of its case, the prosecution examined 15 witnesses. The most material among them were the injured witnesses, *Mohd. Anis*, who was examined as PW-1, and *Deepak Jain*, who was examined as PW-2. *Sonu Jain*, the brother of the injured *Deepak Jain*, who reached the spot immediately after the incident and took him to the hospital, was examined as PW-10. Dr. *P. Ashwin Kumar*, who proved the MLCs of the injured, was examined as PW-9, while Dr. *Deepak Agrawal*, who proved the CT scan report and opined upon the nature of injuries sustained by *Deepak Jain* to be grievous, was examined as PW-12. The remaining witnesses were formal in nature and deposed regarding various aspects of the investigation.

In their statement recorded under Section 313 Cr.P.C, the appellant claimed innocence and false implication. He did not lead any evidence.

5. A perusal of the record indicates that the testimonies of PW-1 and PW-2 are cogent, credible and inspire confidence. PW-2, an injured witness, has consistently deposed that the appellant, who was running a juice cart at the spot, picked up a brick and struck him on the head following an altercation over the charges for chilling their beer bottles. PW-1 has fully corroborated this version and has categorically stated that it was the appellant who inflicted the brick blow on the head of PW-2. The testimonies of PW-1 and PW-2 stand duly corroborated by the medical evidence. As per



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the MLC of PW-1 exhibited as Ex. PW9/A, swelling on the right cheek and tenderness over the chest and back were noted, while the MLC of PW-2 exhibited as Ex. PW9/B also record injuries. Further, PW-12 opined that injury suffered by PW-2 was grievous. It is further noted that the testimonies of the injured witnesses are mutually corroborative, clearly establishing that the appellant inflicted the injury on PW-2.

Having considered the material placed on record, this Court concurs with the findings of the trial court and finds no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offence under Sections 308 IPC.

6. Learned counsel for the appellant, on instructions from the appellant who is present in Court, submits that the appellant does not wish to press the appeal on merits and confine his prayer to seeking release on probation. It is prayed that the benefit of Section 4 of the Probation of Offenders Act, 1958 be extended to him.

7. Learned APP for the State, on the last date of hearing, handed over a copy of the status report which was taken on record, as per which the appellant has not been convicted in any other case.

8. Pursuant to the directions of this Court, the Social Investigation Report of the appellant has been handed over in Court from the Probation Officer, Karkardooma Courts, Delhi, which in turn has been forwarded by the concerned District Probation Officer, Aligarh, Uttar Pradesh. As per the report, the appellant is a resident of Village *Safedpura, Sadhu Ashram, Ukhlana*, Police Station *Harduaganj*, District Aligarh, Uttar Pradesh, and resides in a two-bedroom house measuring approximately 60 square yards. The appellant's family consists of his aged mother, wife, three daughters,



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one son, three brothers and two sisters. It is noted that the appellant's wife works as a labourer, and the economic condition of the family is precarious. The family has further stated that the appellant has since been released and is presently working in a company in Gurugram. The report records a positive assessment of the appellant.

9. 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.”



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10. From above, it is pertinent to note that Section 308 IPC does not prescribe any minimum sentence. The IPC, having been enacted prior to the coming into force of the Probation of Offenders Act, must be read harmoniously with the latter statute. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause. In the present case, the conviction is under Section 308 IPC. Given that even otherwise, the offence does not carry a mandatory minimum sentence, the Court retains discretion to extend the benefit of probation to the appellant, provided the circumstances justify such relief.

11. Having regard to the nature of the offence and the overall findings of the Social Investigation Report, as well as the legal position *qua* the applicability of Probation of Offenders Act as iterated above, this Court is persuaded to adopt a reformatory approach. The appellant has been living peacefully in society, has maintained a stable occupation, and is the sole breadwinner of his family. The Probation Officer's report further affirms his good conduct, normal social behavior, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the sentence 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/- each, with one surety in the like amount each, to the satisfaction of the Trial Court within four weeks from today. They shall maintain peace and good behaviour for a



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period of one year and shall not commit any offence during the period of probation.

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

14. 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, J

DECEMBER 18, 2025

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