



2025:DHC:8515



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

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Date of Decision : 22.09.2025

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**CRL.A. 958/2016**

SUMIT

.....Appellant

Through: Mr. Rakesh Sharma, Advocate with  
appellant in person

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with  
SI Bharat Singh  
Ms.Gayatri Nandwani, Ms.Mudita Sharda and  
Mr.Adrian Abbi, Advocates

**CORAM:**

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

**JUDGMENT (ORAL)**

1. By way of present appeal, the appellant has assailed the judgment dated 23.09.2016 and order on sentence dated 26.09.2016 passed by the learned ASJ (Special Fast Track Court)-01, West, Tis Hazari Courts, Delhi in Sessions Case No. 12/2014, arising from FIR No. 685/2013 registered at PS Uttam Nagar, under Sections 323, 354, 354 A, 376, 511 and 34 of the IPC.

Vide the impugned judgement, the appellant was convicted for the offences under 323/354/509 IPC. Vide the order on sentence, the appellant was directed to pay a fine of ₹1,000/- under Section 323 IPC, and in default,



directed to undergo SI for 7 days; for the offence under Section 509 IPC to undergo imprisonment for the period already undergone, i.e. 4 months and 15 days, with fine of ₹5,000/-, and in default to undergo SI for one month; and to undergo SI for one year with fine of ₹5,000/-, in default to undergo SI for one month, under Section 354 IPC. The sentences were directed to run concurrently. The benefit of 428 Cr.P.C. was extended to him. This Court, by order dated 17.10.2016, suspended the sentence of the appellant during the pendency of this appeal.

2. The case of the prosecution, briefly, as noted by the Trial Court, was that the prosecutrix, married to appellant's brother Harish Sabharwal against the wishes of her in-laws, started living in the matrimonial home at Uttam Nagar. On 24.11.2013, a quarrel took place in which the prosecutrix alleged that she was abused, beaten and her T-shirt torn by her in-laws, including the present appellant. It was further alleged that an attempt was made to commit rape upon her and outrage her modesty.

3. The prosecution, in support of its case, examined nine witnesses. PW-2, the prosecutrix, deposed that on 24.11.2013, her father-in-law, mother-in-law, brother-in-law Sumit (the appellant), and cousin brother-in-law, abused her, assaulted her and her husband, and tore the T-shirt she was wearing. She stated that she was forcibly made to lie down on the ground, and that the appellant along with the others attempted to outrage her modesty by coming on top of her. She also alleged that her husband, who tried to intervene, was beaten by the accused persons. She managed to run out and dial 100, whereafter the police arrived. PW-6, her husband, while supporting the



occurrence of a quarrel, described it as a fight involving all family members, including himself, and conceded that he might have also struck his father and the appellant. He attributed the quarrel to a dispute over shifting of an almirah in the kitchen. Regarding the torn T-shirt, PW-6 stated that it might have been torn by his mother or even by himself during the scuffle, thereby weakening the prosecution's attribution of the act to the appellant. PW-2 in her cross-examination specifically alleged that it was the appellant who had torn her T-shirt, though this was not her version in chief. The testimonies of PW-2 and PW-6 therefore contained material inconsistencies on the role of the appellant and the manner of occurrence, though both agreed that a quarrel had indeed taken place. The remaining witnesses were either formal police witnesses (PW-1, PW-3, PW-4, PW-5, PW-7) or medical witnesses (PW-8, PW-9) who proved the registration of FIR, seizure of clothes, medical examinations, and investigation formalities.

After completion of prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied all the incriminating circumstances put to him and claimed false implication. He did not lead any evidence.

The Trial Court, on a consideration of the evidence, acquitted the accused persons of the charge under Section 376/511 IPC but convicted the present appellant under Sections 323/354/509 IPC.

4. Regarding the offense under Section 509 IPC, the prosecutrix/PW2 had levelled specific allegations that all accused, including the appellant, had used abusive language against her. In cross examination of the prosecutrix,



no suggestion was given that no such abuses were given. In so far as the offence under Section 323 IPC is concerned, PW2 stated that the appellant and others had pushed her due to which she fell down. The husband of the prosecutrix/PW6 had also stated that the appellant and other accused except *Nisha* gave beatings to him and the prosecutrix. Lastly, coming to the offence under Section 354 IPC, the allegation of the prosecutrix was that the appellant and others had pushed her down and come on top of her. In cross examination, she specifically stated that appellant had torn her T-shirt. No suggestion to the contrary was given. On an overall view of the facts and circumstances, this Court finds that there is no infirmity in the impugned judgement and hence the conviction of the appellant under Section 323/354/509 IPC is upheld.

5. Learned Counsel for the appellant, on instructions from the appellant, who is present in Court, seeks release on probation of good conduct.

6. The prosecutrix, who is also the sister-in-law of the appellant, has joined the proceedings through V.C. and is duly identified by the IO, has expressed that she has forgotten the past and holds no grudge against the appellant, who is her relative and states that she has no objection if a lenient view is taken on the appellant's request.

7. The learned APP for the State handed over the status report dated 13.09.2025, which is taken on record, regarding the appellant's antecedents and involvement in other cases. Further, he submits, on instructions, that the appellant is not found involved in any other criminal case apart from the present matter.



8. Pursuant to the directions of this Court vide order dated 11.09.2025, a Social Investigation Report dated 16.09.2025 prepared by the Probation Officer, Dwarka Courts, has been placed on record. The report notes that the appellant, aged 34 years, is married and resides with his wife and 10-year-old son at a rented accommodation in Uttam Nagar. His father is employed at a petrol pump, his stepmother is a housewife, while his siblings are engaged in private employment. The appellant has studied up to 10th standard and is working as a mobile phone repairman at Khan Market, earning approximately ₹25,000/- per month. His neighbours, who have known him for over 15 years, described him as a person of good moral character. The appellant has himself expressed remorse for his involvement in the quarrel and he further acknowledged it as a mistake. His conduct in jail has been reported as satisfactory, with no adverse remarks. The Probation Officer has opined that the appellant is suitable to be released on probation.

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. v. State of Punjab & Anr.,<sup>1</sup> has extended the benefits of the Probation of Offenders Act, 1958 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 of Offenders Act came into being. The

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<sup>1</sup> 1 (2021) 2 SCC 763



relevant extract is reproduced hereunder: -

*“16. A more nuanced interpretation on this aspect was given in CCE v. Bahubali. 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. It is in this context; it was observed in State of M.P. v. Vikram Das 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 Punjab 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...”*

10. Pertinently, in the appellant’s case, Sections 323/509 IPC do not prescribe a mandatory minimum sentence. Though Section 354 IPC does prescribe a mandatory minimum sentence of one year, it must not be lost sight of that 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. Thus, this Court retains discretion to



extend the benefit of probation to the appellant, provided the circumstances justify such relief.

11. The nominal roll dated 18.09.2025 reflects that the appellant has undergone about half of the sentence of one year and has no other pending case or prior conviction, and that his conduct in jail was satisfactory. In the facts of the present case, the appellant was a young man at the time of the incident, has since married, is supporting his family including a minor child, he is physically as well as mentally fit. Further, he has no criminal antecedents, and has expressed remorse. The prosecutrix has herself stated that she does not wish to pursue the matter further. The Probation Officer has recommended his release on probation.

12. Keeping in view of the aforesaid, and having regard to the facts and circumstances of the case, this Court is of the view that no fruitful purpose would be served by requiring the appellant to undergo further incarceration. The underlying object of the Probation of Offenders Act, 1958 is to reform and rehabilitate offenders, particularly first-time offenders, into society as law-abiding citizens. Accordingly, while upholding the judgment of conviction dated 23.09.2016 and the order on sentence dated 26.09.2016, the substantive sentence imposed on the appellant is modified to the extent that he is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, for a period of six months. The appellant shall furnish a personal bond in the sum of Rs. 5,000/- with one surety of the like amount, to the satisfaction of the learned Trial Court, within a period of two weeks from today.



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13. The appellant shall remain under the supervision of the Probation Officer concerned, before whom he shall report once every month. In case of breach of the bond conditions or involvement in any other offence during this period, the benefit of probation shall stand revoked, and the appellant shall be liable to serve the remaining portion of the sentence awarded by the Trial Court.

14. With the above directions, the appeal stands disposed of.

15. A copy of this order be communicated to the concerned Jail Superintendent as well as the learned Trial Court for information and compliance.

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

**SEPTEMBER 22, 2025**

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