

**HIGH COURT OF DELHI: NEW DELHI**

**+ CRL. A. No. 173/2001**

**% Judgment delivered on: 29<sup>th</sup> October, 2009**

HARISH CHANDER ..... Appellant  
Through: Mr. S.C. Phogat, Adv.

Versus  
THE STATE (GOVT. OF NCT OF DELHI) .....Respondent  
Through: Mr. Lovkesh Sawhney, APP

**Coram:**  
**HON'BLE MR. JUSTICE A.K. PATHAK**

1. Whether the Reporters of local papers No  
may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be No  
reported in the Digest?

**A.K. PATHAK, J. (Oral)**

1. Appellant has filed this appeal against the judgment dated 2<sup>nd</sup> March, 2001 passed by the Additional Sessions Judge, whereby he has been convicted under Section 325/34 IPC as also against the order on sentence dated 3<sup>rd</sup> March, 2001, whereby he has been sentenced to undergo rigorous imprisonment for a period of one year with imposition of fine of Rs.10,000/- and in default of payment

of fine to further undergo simple imprisonment for a period of three months.

2. In brief, prosecution case is that on 7<sup>th</sup> February, 1999 at about 1.00 PM the appellant along with his son Vikram and wife Dhanpati intercepted the complainant/injured, Sh. Ishwar Singh, S/o Jage Ram, who was their neighbour, and picked up a quarrel with him. Appellant and Vikram were having lathis in their hands. Appellant caught hold of complainant/injured by his neck and exhorted that he should be finished that day. Complainant got himself released and tried to run away but the accused Dhanpati caught hold of him from behind and Vikram gave a lathi blow on his head. Appellant and Vikram continued to give lathi blows to the complainant even after he fell down. Some passersby intervened and saved the complainant.

3. After the information regarding incident was received in the Police Station Kanjhawla, D.D. No. 14-B was recorded and handed over to Head Constable Raj Kumar for enquiry, who along with Constable Hare Ram reached the spot and came to know that complainant/injured had been removed to DDU hospital by a PCR Van. Thereafter, Head Constable

Raj Kumar reached DDU hospital and recorded statement of complainant/injured, wherein he narrated the incident in the manner, as has been mentioned in para 2 hereinabove. On the basis of his statement, FIR No. 16/1999 under Sections 323/341/34 IPC was registered. Accused persons were arrested. Subsequently, they were released on bail.

4. After completion of investigation, Challan was filed in the Court of learned Metropolitan Magistrate, who took cognizance of offence and committed the case to Sessions Court for trial. Charge under Section 308/34 IPC was framed against the appellant and other co-accused Vikram and Dhanpati, to which they pleaded not guilty.

5. Prosecution examined nine witnesses to support their case. Complainant/injured namely Ishwar Singh was examined as PW-5. He corroborated the version of the prosecution fully. He supported his statement Ex.PW-5/A recorded by the Police. So far as other witnesses are concerned, they are formal in nature. PW-1 Dr. Pradeep Soni, PW-4 Dr. Deven Seth and PW-9 Dr. Suresh Khurana have proved MLC of complainant as Ex. PW1/A and the endorsement made therein regarding the nature of injury as

Ex. PW1/B. PW-2 Dharamvir was witness regarding arrest of accused Dhanpati. PW-3 Head Constable Baljit Singh had recorded the FIR on the basis of Rukka sent by Head Constable Raj Kumar and he proved the same as Ex.PW-3/A. PW-6 SI Om Prakash was subsequent Investigating Officer and had prepared the site plan Ex.PW-6/A. PW-8 Head Constable Raj Kumar is the initial Investigating Officer and he deposed about the investigations conducted by him.

6. After conclusion of prosecution evidence, statements of appellant and other accused persons were recorded under Section 313 Code of Criminal Procedure, 1973 wherein they had denied their complicity in the crime and claimed themselves to be innocent. According to them, complainant/injured had falsely implicated them. They also examined one Shri Puran Singh as DW-1, who deposed that the appellant was with him, between the period of 10 A.M. to 4/5 P.M. on 7<sup>th</sup> February, 1999 and had been falsely implicated.

7. Learned trial court, after scrutinizing the evidence led by the parties, came to the conclusion that appellant along with his co-accused Vikram and Dhanpati had assaulted

the injured Ishwar Singh resulting in grievous injuries to him and convicted them under Section 325/34 IPC.

8. Learned counsel for the appellant has not pressed this appeal against his conviction. However, he has assailed the order on sentence. He has contended that the appellant is working as Sub Inspector in the Technical Branch of Delhi Police. Some disputes arose between the appellant and his neighbour, wherein injuries were caused to complainant in a spur of moment. There was no intention of the appellant, his wife and son to cause any injury to the complainant. Incident relates back to the year 1999. As of today, about 10 years have gone by. Appellant has 37 years of unblemished service record. If he is sent to jail, he would lose his job, as a result whereof his family would suffer immensely. He has further contended that co-accused were released on probation by the learned Additional Sessions Judge. Role of the appellant was not graver than that of his co-accused. Accordingly, learned Additional Sessions Judge should have also released the appellant on probation to give him a chance to improve himself.

9. Though appellant has not assailed his conviction on merits, however, I have gone through the trial court file carefully including the statement of all the witnesses, more particularly that of PW-5 Ishwar Singh and I find that same is trustworthy. While deposing in the court PW-5 has described the incident in the same manner in which it stated in the FIR. Injuries on the person of PW-5 were proved as grievous, in view of the MLC Ex. PW1/A. Accordingly, I am of the view that learned Additional Sessions Judge rightly convicted the appellant under Section 325/34 IPC.

10. So far as, order on sentence passed by the learned Additional Sessions Judge is concerned, I am of the view that same requires to be modified in the peculiar facts of the case. Appellant has no previous criminal record. He is working in the Technical Branch of Delhi Police for the last thirty seven years. Two co-accused, whose roles was similar to that of the appellant, were given benefit of Probation of Offenders Act, 1958 by the learned Additional Sessions Judge. In my view appellant is also entitled to benefit of Section 4 of Probation of Offenders Act in the facts of this

case. Accordingly, while the conviction of the appellant is maintained, I modify the order on sentence and direct that the appellant be released on probation on furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount for keeping his good conduct for a period of one year. Needless to add that appellant would also be entitled to benefit of Section 12 of Probation of Offenders Act, 1958. The bond be furnished within four weeks, to the satisfaction of learned trial court.

11. Appeal is disposed of in the above terms.

12. Trial court record be sent back.

**A.K. PATHAK, J**

**OCTOBER 29, 2009**  
**AG**