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

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Date of decision: July 16, 2019

+ **CRL.A. 26/2010**

VINOD alias Ganja & ORS.

..... Appellants

Through: Mr. Anurag Jain and Ms. Ayushi
Sharma, Advs. with appellant Nos. 1
& 4 in person.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Tarang Srivastava, APP with ASI
Jatan Swaroop, PS Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K. CHAWLA, J. (ORAL)

By the instant Regular Appeal all the four convicts assailed the judgment of conviction under Section 308/34 IPC dated 21.11.2009, and, the order on sentence dated 23.11.2009, passed by Id. ASJ, East-III, Karkarooma.

2. At the onset, it comes to be pointed out that vide judgment dated 09.10.2013, one of the convicts - appellant No.3 was directed to be released on probation of good conduct while maintaining his conviction for the offence under Section 308/34 IPC. Simultaneously, it also comes to be

pointed out by Mr. Srivastava, Id. APP that during the pendency of the instant appeal, the appellant No.2 Sukhbir Singh has expired and the verification report in that regard has since been placed on record. Thus, the appeal survives only as regards the convicts - appellant Nos. 1 and 4 namely, Vinod @ Ganja and Hem Singh.

3. While extending the benefit of probation under Section 360 Cr.P.C. to the co-convict Lalit Kumar, this court has already appreciated the evidence led by the prosecution to some extent and during the course of hearing, Mr. Jain, Id. Counsel for the appellants, on instructions from the appellants Vinod @ Ganja and Hem Singh, present before the court, submits that the appellants do not challenge their conviction under Section 308/34 IPC but for the order on sentence.

4. As regards the order on sentence, Mr. Jain, Id. counsel for the present appellants submits that the incident was the outcome of a trifle issue and that all the four appellants were convicted for the offence under Sec. 308/34 IPC. In his submissions, the intention attributed to the appellants was common and therefore, when one of the co-convicts has been released on probation, the present appellants cannot be treated differently. Thus, according to him, the appellants were equally entitled to the benefit of probation as provided for under Section 360 Cr.P.C. He also contends that the present appellants have no criminal antecedents and do small time jobs, and, that, in view of the fact that they have already been in JC for few days and the incident is of 29.05.2006, subjecting them to any imprisonment at this point of time may

be too harsh keeping in view the nature of the incident and the injuries sustained by the victim. It is thus strenuously contended that the present appellants may also be released on probation on such terms as this court may impose.

5. Mr. Srivastava, Id. APP on his part however contends that the present appellants are not similarly placed as the co-convict Lalit Kumar inasmuch as the role attributed to the co-convicts including Lalit Kumar- who was released on probation on 09.10.2013, was of holding the hands of the victim, while the present appellants gave Lathi and Danda blows and inflicted injuries on the head.

6. In the impugned judgment, the trial court has made a categorical observation that in a sudden fight it was irrelevant as to who was the first aggressor. The incident, of course, occurred at the spur of the moment and was not pre-meditated.

7. All the original appellants were convicted for the offence under Section 308/34 IPC and taking note of the totality of the facts and circumstances, to draw a distinction as to the role of the individual appellants for having held the hands while two others assaulted with Lathis and Dandas, to consider the release on probation, may not be reasonable, especially, taking note of the fact that long time has passed from the date of the incident and nothing comes to be pointed out for the present appellants having any criminal antecedents.

8. Taking into account the totality of the facts and circumstances, while upholding the conviction of offence under Section 308/34 IPC, the impugned order on sentence is set aside and the appellants are released on probation of good conduct instead of sentencing them at once to any punishment on their entering into a bond in the respective sum of Rs.50,000/- with one surety of the like amount each, to appear and receive sentence when called upon during a period of two years from today as the court may direct and in the meantime to keep the peace and be of good behaviour. The bonds to such effect shall be executed by the appellants to the satisfaction of the trial court and for the said purpose, the appellants shall appear before the trial court on 26-7-2019.

Dasti under the signatures of the Court Master.

JULY 16, 2019

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A.K. CHAWLA, J.