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

+ **CRL.A. 546/2024**

KHEMCHAND @ BHOLA & ANR.Appellants

Through: Mr. Naresh Dahiya, Adv alongwith
appellants

versus

STATE (NCT OF DELHI)Respondent

Through: Ms. Shubhi Gupta, APP for State with
Ms. Yushra, Adv.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

04.12.2025

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1. By way of present appeal, the appellants seek to assail the judgement of conviction dated 23.11.2023 and order on sentence dated 19.04.2024 passed by Principal District & Sessions Judge, North-West District, Rohini Courts, Delhi, in SC no. 53598/2016 arising out of FIR no. 785/2016 registered under Sections 308/34 IPC at P.S. Mangol Puri, Delhi.

2. Vide the impugned order on sentence, the appellants were convicted for the offence punishable under Section 308/34 IPC and sentenced to undergo RI for a period of 3 years alongwith fine of Rs.20,000/- each in default whereof to undergo SI for a period of 6 months. The benefit of Section 428 Cr.P.C. was granted to the appellants.

The sentences of the appellants were suspended during pendency of the present appeal by this Court vide order dated 19.06.2024.



3. Briefly put, the case of the prosecution is that on 26.07.2026 at about 9:30PM, at the puncture repairing shop of *Momin* at B-Block Chowk, Mangolpuri, Delhi, where *Mohd. Firoz* was present working as labourer, a white Hyundai i20 car bearing registration no. DL 10 CA 0617 reversed and hit the shop counter. Three boys got down from the vehicle and began abusing and scuffling with *Mohd. Firoz*. *Momin* arrived at the spot and intervened, whereupon one of the boys, *Sonu*, took an iron rod from the car and struck *Momin* on the head. In the meantime, *Badshah*, a specially-abled person working at the shop, attempted to rescue *Momin*, but *Bhola* and the third boy also took iron rods from the car and, alongwith *Sonu*, started beating *Momin* and *Badshah*. As a crowd gathered, the accused persons fled in their car.

4. In support of its case, the prosecution examined 10 witnesses. The most material among them were the injured witnesses, *Mohd. Feroz*, who was examined as PW-2, and *Momin*, who was examined as PW-3. Dr. C.P. Meena, CMO, who conducted the initial medical examination of the injured, referred for further treatment and proved the MLCs, was examined as PW-6. Dr. Manish Bummerkar, who subsequently treated the injured, examined as PW-7. 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 appellants claimed innocence and false implication.

5. A perusal of the record indicates that the testimony of PW-2 and PW-3 is cogent, credible and inspires confidence. PW-2 correctly identified the appellants during his statement. Further, the injuries sustained by PW-3 were opined to be grievous in nature as the CT scan revealed a fracture of



the right frontal bone; his report is Ex. PW7/A, and the CT Scan is Ex. PW7/B. PW-6 has also noted the nature and extent of injuries, it is recorded that a lacerated wound over the occipital region measuring 4cm x 3cm, and another lacerated wound over the right temporal region measuring 3cm x 2cm, which was profusely bleeding when he examined PW-3 on 26.07.2016. In cross-examination, PW-6 stated that the injuries mentioned in Ex. PW6/A (relating to victim *Badshah*) and Ex. PW6/B (relating to victim *Momin*) could be caused by a blunt object used with force, thereby supporting the prosecution version that the victims were assaulted with *danda*, hockey sticks, etc. It is noted that *Badshah*, though injured, was not examined as a witness. It is further noted that the assault was premeditated, and the intention was to cause injury to the victims. Additionally, PW-2 and PW-3 have identified the car no. DL10 CA 0617 through photographs, which further corroborates the prosecution case. It is further noted that nothing was brought on record to substantiate the appellants' claim of false implication.

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 308/34 IPC.

6. Learned counsel for the appellants, on instructions, submits that the appellants do not wish to press the appeal on merits and confine their 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 them.

7. Learned APP for the State, on instructions, submits that appellants are not convicted in any case. As per the Nominal Rolls, the appellants' jail conduct during custody period has been reported to be satisfactory.



8. Pursuant to this Court's directions, the Social Investigation Report of the appellants has been received from the Probation Officer, Rohini Courts, Delhi.

As per the report concerning appellant/*Khemchand @ Bhola*, the appellant is 35 years of age, educated upto 10th class, and resides in a rented house situated on the first floor in UT Block, measuring around 50 square yards. His family comprises his aged parents, wife, 1 year old daughter, and a young sister. The report further records that the appellant is the sole breadwinner of the family and earns his livelihood by working in waterproofing, earning approximately Rs. 15,000/- per month. It is also noted that he is not involved in any other case. His behaviour is described as normal and socially appropriate, and his family and neighbours have also expressed a favourable opinion about him.

As per the report concerning appellant/*Sunil @ Sonu*, he is 35 years of age, educated upto 10th class, and resides in his own house situated at B-1161/62, Mangolpuri, B-Block, Delhi. His family comprises his aged mother, wife, and 5 year old son. The report further records that the appellant is the sole breadwinner of the family and earns his livelihood by driving an E-rickshaw, with an average monthly earning of approximately Rs. 14,000/-. His behaviour and temperament were assessed as normal, calm, and socially appropriate. His mother and neighbours have stated that he is of good moral conduct.

Both the appellants are reported to be of poor economic background and having been facing trial since 2016. They are stated to be of normal social behaviour. Their families and neighbours have spoken positively about their conduct and expressed a favourable opinion regarding their



reformation and adjustment in society. The Probation Officer has stated that there is a possibility of rehabilitation and reformation in respect of both the appellants.

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.”

10. From above, it is pertinent to note that Section 308/34 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 read with Section 34 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 appellants, provided the circumstances justify such relief.

11. Having regard to the nature of the offence, the period of custody already undergone, 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 appellants have been living peacefully in society, has maintained a stable occupation, and are the sole breadwinners of their respective families. The Probation Officer's report further affirms their good conduct, normal social behaviour, 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 appellants is modified to the extent that they 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 and shall not commit any offence during the period of probation.



13. The appellants shall remain under the supervision of the concerned Probation Officer for a period of 1 year each 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 concerned appellant shall be liable to undergo the sentence as awarded by the Trial Court.

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

15. 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 4, 2025

Pallavi