



2025:DHC:11774



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

%

Date of Decision: 12.12.2025

+

CRL.A. 428/2018

RAJESH & ORS

.....Appellants

Through: **Mr.Tarun Gahlot, Advocate**

versus

STATE (NCT OF DLEHI)

.....Respondent

Through: **Mr. Pradeep Gahalot, APP for State
with Mr.Devvrat Sharma and
Mr.Japneet Singh, Advocates with SI
Mahendra Patel**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeal has been preferred assailing the judgment of conviction dated 22.03.2018 and the order on sentence dated 24.03.2018 passed by the learned District & Sessions Judge (North), Rohini Courts, Delhi in SC No. 57366/17 arising out of FIR No. 296/2011 registered at Police Station Narela, whereby the appellants were convicted for the offences punishable under Section 308 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of three years each along with fine of Rs. 10,000/-. The benefit of Section 428 Cr.P.C. was extended to the appellants.



2. Vide order dated 17.04.2018, the sentence of the appellants was suspended during the pendency of the present appeal.
3. During the pendency of the appeal, it was brought to the notice of this Court that appellant No.2, Ravi Kumar, expired on 20.11.2025. Accordingly, the appeal qua appellant No.2 stands abated.
4. Briefly stated, the prosecution case is that on 16.05.2011, at about 11:00 a.m., the injured Dharmender (PW-1), was allegedly assaulted near Shiv Mandir, Mamurpur, Narela. It was alleged that the appellants, along with one Manoj (since deceased), acting in furtherance of their common intention, assaulted the injured with hockey sticks, rods and bricks, causing grievous injuries to Dharmender and simple injuries to Deepak and Sandeep.
5. On receipt of this information, DD No. 20-A was recorded and PCR officials took the injured persons to Raja Harish Chander Hospital. After receipt of medical opinion, the FIR initially registered under Sections 323/325/34 IPC was later converted to Section 308 IPC. Upon completion of investigation, the charge-sheet was filed and charges were framed under Section 308/34 IPC.
6. In support of its case, the prosecution examined fifteen witnesses. PW-1, the injured complainant Dharmender @ Cheeku, deposed with respect to the alleged incident and attributed specific roles to the accused persons. Deepak (PW-2) and Sandeep (PW-3), who also sustained injuries, were examined as eyewitnesses to the occurrence. Mandeep (PW-5), who was allegedly present with PW-1 during quarrel, did not support the prosecution case, thereby turning hostile. Retired ASI Ishwar (PW-4), the Duty Officer examined as well. Along with others, medical witnesses PW-6, PW-11, PW-12 and PW-13 were examined to prove the MLCs and



treatment records of the injured persons. B.S Meena (PW-14), sub-registrar (birth & death) was also examined. PW-7, PW-8, PW-9, PW-10 and PW-15 were examined as police or formal or official witnesses connected with the investigation. The statements of the accused persons were recorded under Section 313 Cr.P.C. on 17.10.2017, wherein they denied the prosecution case, testified that there was no quarrel and claimed false implication. On the other hand, appellants got Ranbir examined as DW-1. He testified that he was present at the place of occurrence, and instead of a quarrel, an accident had taken place in which Mandeep (PW-5) and Dharmender (PW-1) sustained injuries.

7. Learned counsel for the appellants assailed the impugned judgment contending that the prosecution case suffers from material contradictions and improvements. The defence version of an accidental fall from a tractor-trolley was also put forth. On behalf of the appellant No.3, it was submitted that he was not named in the earliest version of the incident and was implicated only after a delay of about five weeks, without any explanation.

As regards appellant No.1, it was submitted that even if the conviction is sustained, the learned counsel prayed, on instructions from the appellant, that the sentence be modified to the period already undergone as he has undergone about 2 years and 10 months of his sentence and duly deposited the fine amount imposed upon him.

8. Learned APP for the State supported the impugned judgment and submitted that the testimony of the injured witness is consistent and corroborated by medical evidence. It was contended that the Trial Court has correctly appreciated the evidence and no interference is warranted.



9. The prosecution case is founded primarily on the ocular testimony of the injured witness (PW-1) and two related eyewitnesses (PW-2 and PW-3), supported by medical evidence and the testimony of police witnesses.

10. PW-1 is the injured complainant and his presence at the spot is not in dispute. His testimony establishes that an altercation took place near Shiv Mandir, Mamurpur, and that he sustained injuries on his head and teeth. PW-1's deposition shows that while he consistently attributed a role to appellant No.1 (Rajesh), his account with respect to appellant No.3 does not find reflection in the earliest version of the incident. PW-1 also stated during cross-examination that he could not recall whether he had specifically stated before the police that appellant No.3 attacked him with an iron rod, thereby diluting the certainty of attribution of role to appellant No.3.

11. PW-2 and PW-3 are closely related to the injured and are admittedly interested witnesses. Their presence at the spot is sought to be explained by the prosecution on the ground that they rushed to the place of occurrence upon hearing about the quarrel.

12. Further, PW-5 (Mandeep), who was projected as a material witness by the prosecution, turned hostile.

13. A crucial aspect of the present case is the delayed implication of appellant No.3, Purshottam. The record reveals that, the incident allegedly occurred on 16.05.2011, the injured was medically examined on the same day, the FIR was registered only on 22.06.2011 after receipt of opinion on the MLC. The name of appellant No.3 surfaced for the first time in supplementary statements recorded on 22.06.2011. The DD entry, the initial medical records, and the contemporaneous statements recorded immediately after the incident do not attribute any role to appellant No.3.



14. The prosecution has failed to explain why appellant No.3 was not named at the first available opportunity, particularly when the injured was conscious enough to give a statement. This unexplained delay renders the prosecution version against appellant No.3 unsafe for sustaining a conviction.

15. Insofar as Appellant No.1 is concerned, his name has figured in the FIR itself. The injured has consistently ascribed him the role of causing injuries. The same finds corroboration in the testimonies of PW-2 and PW-3 as well as the MLC. The medical evidence establishes that PW-1 suffered a grievous head injury and dental trauma. PW-6, the first treating doctor, opined the injuries to be grievous.

16. The evidence on record, when appreciated as a whole, reveals a clear distinction between the case against appellant No.1 and that against appellant No.3. Appellant No.1 has been named by PW-1 from the very beginning. In contrast, appellant No.3 was introduced belatedly, without explanation, and the evidence against him is marked by inconsistencies, improvements, and lack of independent corroboration.

17. In view of the above, this Court is of the considered opinion that the prosecution has failed to establish the involvement or presence of appellant No.3, Purshotam, beyond reasonable doubt. He is, therefore, entitled to the benefit of doubt.

18. Accordingly, the conviction of appellant No.3 is set aside and he is acquitted of the charges levelled against him. This Court finds no perversity or illegality in the finding of guilt recorded by the Trial Court insofar as appellant No.1 is concerned. The conviction of appellant No.1 under Section 308 read with Section 34 IPC is accordingly upheld.



19. Coming to the alternative submission made on behalf of appellant No.1, it is pertinent to mention that he has completed more than half of his sentence and in view of the judgment in Sonadhar v. State of Chhattisgarh¹, the law with regard to release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in the relevant portion of the same is extracted hereinunder:

'We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavour be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.'

20. Appellant No.1 has already undergone 2 years and 10 months out of the 3 year sentence awarded to him and has deposited the fine amount imposed by the Trial Court. Having regard to the passage of time since the incident and the period of custody already undergone, the ends of justice would be met by modifying the substantive sentence to the period already

¹ decided on 06.10.2021, in SLP (CRL)No. 529/2021



2025:DHC:11774



undergone. Therefore, the sentence of appellant no. 1/Rajesh is modified to the period already undergone.

21. The appeal is partly allowed and disposed of in the above terms. Pending applications, if any, also stand disposed of.

22. The bail bonds furnished by the appellants shall stand cancelled and their sureties shall be discharged.

23. A copy of this judgment be sent to the concerned Trial Court and the Superintendent of Jail for information and compliance.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 12, 2025