



\$~56 to 59

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

+ CRL.A. 350/2016

RAHUL CHOUDHARY @ RAHULAppellant

Through: Mr.Narender Mann, Mr.Shishir Mathur,
Ms.Muskan Tyagi and Mr.Sarthak Gupta,
Advocates

versus

STATERespondent

Through: Ms.Shubhi Gupta, APP for State with
SI Indrajeet

+ CRL.A. 381/2016

AMIT KUMARAppellant

Through: Mr.Narender Mann, Mr.Shishir Mathur,
Ms.Muskan Tyagi and Mr.Sarthak Gupta,
Advocates

versus

STATERespondent

Through: Ms.Shubhi Gupta, APP for State with
SI Indrajeet

+ CRL.A. 383/2016

PAWAN KUMARAppellant

Through: Mr.Narender Mann, Mr.Shishir Mathur,
Ms.Muskan Tyagi and Mr.Sarthak Gupta,
Advocates

versus

STATERespondent

Through: Ms.Shubhi Gupta, APP for State with
SI Indrajeet

+ CRL.A. 429/2016

RAKESH KUMARAppellant



Through: Mr.Narender Mann, Mr.Shishir Mathur,
Ms.Muskan Tyagi and Mr.Sarthak Gupta,
Advocates

versus

STATE

.....Respondent

Through: Ms.Shubhi Gupta, APP for State with
SI Indrajeet

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

07.11.2025

%

1. The present batch of appeals arises from a common judgment dated 05.03.2016 and order on sentence dated 16.03.2016 passed by the learned Additional Sessions Judge-04 (West), Tis Hazari Courts, Delhi, in Sessions Case No. 11/1/14 arising out of FIR No. 891/2004 registered at P.S. Rajouri Garden under Sections 451/323/324/427/34 IPC.

Vide the impugned order on sentence, the appellants were each directed to undergo 1 year RI for the offence punishable under Sections 324/34 IPC; 5 years RI alongwith fine of Rs.20,000/-, in default thereof to undergo 6 months SI, for the offence punishable under Sections 326/34 IPC; and 3 years RI alongwith fine of Rs.10,000/-, in default thereof to undergo 3 months SI, for the offence punishable under Sections 450/34 IPC. The respective sentences of each appellant were directed to run concurrently and benefit under Section 428 Cr.P.C. was granted to all the appellants.

The sentences of the appellants were suspended during pendency of the present appeals vide common order dated 05.05.2016.

2. The case of the prosecution, briefly stated, is that on 13.11.2004 at about 8:00 p.m., there was an altercation between appellant/*Amit Kumar* and



one *Harvinder Singh* (PW-4), and soon thereafter, the appellants reached WZ-72, Village Titarpur, Delhi, entered the said premises where *Parveen*/PW-2, *Rajesh*/PW-3, *Harvinder Singh*/PW-4, and *Manoj @ Minte*/PW-6 were present, and caused damage to the property and assaulted the aforesaid occupants with swords and hockey sticks, resulting in injuries to *Harvinder Singh*, *Manoj*, and *Rajesh*.

3. The prosecution examined 18 witnesses in support of its case. Among them, the injured witnesses *Rajesh*/PW-3, *Harvinder*/PW-4, and *Manoj @ Minte*/PW-6 deposed about the whole incident in question, and attributed specific roles to the appellants. *Parveen*/PW-2, eyewitness to part of the incident, also corroborated the presence of all four appellants at the scene and the fact that they had entered the premises and caused damage to household articles. PW-7/*Vinod* and PW-17/*Jitender* deposed as to the events before and after the incident in question. The rest of the prosecution witnesses were medical and police witnesses that came into the picture later on.

4. The appellants examined 12 witnesses in their defence. DW-1/*Neelam*, DW-2/*Krishna Pal*, DW-8/*Sunil Dutt Sharma*, and DW-9/*Yogender Sharma* attempted to set up a defence of *alibi* for the appellant/*Pawan Kumar*. DW-3/*Geeta* pertained to the defence of *alibi* raised by appellant/*Rakesh*. DW-12/*Roshan Lal* was examined to rebut the case *qua* the injuries sustained by PW-3. DW-4, DW-5, DW-6, DW-7, DW-10 & DW-11 deposed about previous litigations pending between the family of the accused and the family of the injured.

5. Learned counsel for the appellant, on merits, contends that although the prosecution has alleged that the injuries were caused by swords and



hockey sticks, none of the alleged weapons of offence have been recovered at the instance of the appellants. He further submits that the injuries sustained by *Harvinder*/PW-4 were opined to be simple in nature, and that the injuries sustained by *Manoj*/PW-6 and *Rajesh*/PW-3 do not fall within the ambit of Section 320 IPC. In view of the foregoing, learned counsel for the appellant submits that the essential ingredients of Section 326 IPC are not made out and the conviction of the appellants therein cannot be sustained.

Learned counsel for the appellants, without prejudice to his submissions on merits and in the alternative, further submits, on instructions, that the appellants may be granted the benefit of probation under the Probation of Offenders Act, 1958 (hereinafter “Probation Act”). He states that the FIR in the present case dates back to 2004 and that the appellants are not involved in any other criminal case.

6. Learned APP for the State, supporting the impugned judgment, submits that the testimonies of the injured/eye-witnesses are consistent on all material particulars and inspire confidence. She states that the minor contradictions arising therein do not affect the core of the prosecution case and the conviction recorded by the Trial Court warrants no interference.

7. I have heard the rival submissions and carefully examined the record.

8. The impugned judgment clearly cites the simple injuries caused to *Harvinder* as the basis for the appellants’ conviction under Sections 324/34 IPC; and the causing of grievous injuries to *Manoj @ Minte* and *Rajesh* as the reason for convicting the appellants under Sections 326/34 IPC.

9. The MLC of *Manoj* (Ex. PW-11/B) records CLW wounds over the left little finger, left forearm, and right forearm. On a plain reading of the



MLC, none of the injuries described therein fall within the ambit of “grievous hurt” as defined under Section 320 IPC. Dr. *S. Bhalla*, who opined the injuries to be grievous, was not examined as a witness, and no explanation is available on record as to how the said injuries could constitute “grievous hurt”. Concededly, there is no document available on record that would bring the injuries within the clause “Eighthly” of Section 320 IPC.

10. With respect to the injuries sustained by *Rajesh*, the attention of this Court has been drawn to the concerned MO’s opinion dated 13.11.2004, wherein no fracture was detected, and the case was instead diagnosed as one of “avascular necrosis” of the head of the left femur. Notably, the doctor who examined the patient, conducted the X-ray, and provided the medical opinion was not examined as a witness. The record also does not disclose what medical treatment, if any, was undertaken by the injured, as the medical certificate dated 20.11.2004 notes that he had absconded from the hospital. Moreover, the medical documents of the injured from North Point Hospitals Pvt. Ltd. also do not indicate treatment for any fracture.

11. There is no reliable medical or radiological evidence on record to establish that any of the aforesaid injuries amounted to “grievous hurt” within the meaning of Section 320 IPC. This Court is of the considered view that, in light of the above, the benefit of doubt must enure to the appellants. It follows that the conviction of the appellants under Sections 326/34 IPC cannot be sustained and the same is accordingly set aside.

12. As for the conviction under Sections 324/34 IPC, the remaining evidence on record must be considered. The testimonies of the three injured witnesses and the eyewitness to part of the incident (*Parveen/PW-2*, *Rajesh/PW-3*, *Harvinder Singh/PW-4*, and *Manoj @ Minte/PW-6*) are clear,



cogent, and consistent. They have corroborated each other on all material particulars and have withstood the test of cross-examination. Nothing has been elicited from them to cast any doubt on their version, and the minor discrepancies that exist are natural with the passage of time. Their account is further corroborated by PW-7/*Vinod* and PW-17/*Jitender*.

While it has been argued that the appellants were falsely implicated due to prior enmity between the two groups, the same has not been proved conclusively by the defence witnesses examined. Similarly, the pleas of *alibi* raised by the appellants *Pawan* and *Rakesh* have not been proved to any extent. These pleas were not put to the prosecution witnesses during cross-examination, lack credible supporting material, and appear to be afterthoughts.

The appellants have not been able to point to any material inconsistency in the prosecution evidence that could amount to a reasonable doubt. This Court is of the considered view that the fact that the appellants, in furtherance of their common intention, caused simple injuries to the injured witnesses stands established. The conviction of the appellants under Sections 324/34 IPC is therefore affirmed.

13. As regards the conviction under Section 450/34 IPC, it is evident that the predicate offence contemplated under Section 450, namely the commission of an offence punishable with imprisonment for life, was based on the conviction under Section 326 IPC. Once the conviction under Section 326 IPC has been set aside, the foundation for the offence under Section 450 IPC ceases to exist. However, the evidence does establish that the appellants committed house-trespass with intent to commit an offence punishable with imprisonment. The conviction under Sections 450/34 IPC is therefore



modified to one under Sections 451/34 IPC.

14. Accordingly, the conviction of the appellants under Sections 324/34 IPC is upheld, the conviction under Sections 326/34 IPC is set aside, and the conviction under Sections 450/34 IPC is altered to one under Sections 451/34 IPC.

15. The matter now turns to the question of sentencing. At the request of learned counsel for the appellants, probation reports were requisitioned from the concerned Probation Officer at the last date of hearing. The same have been received in Court and are taken on record. The four Social Investigation Reports dated 04.11.2025, in respect of all four appellants, bear the signatures of Mr. Kuldeep Dahija, Probation Officer, Tis Hazari Courts.

16. Additionally, learned APP for the State has handed over a status report regarding the antecedents of the appellants, which is also taken on record. The report reflects that none of the appellants have any criminal involvements apart from the present case.

17. As per the reports, appellant/*Amit Kumar* (39 years, unmarried) resides with his family and works as a certified swimming coach, earning approximately Rs.50,000/- per month. He holds a Bachelor's degree in Physical Education. He was around 18 ½ years old at the time of the incident. His family has expressed a positive attitude towards him and he has assured that he will keep away from anti-social elements in the future.

Appellant/*Rakesh Kumar* (married) resides with his wife and three sons. He has studied up to Class XII and runs a *band-baja* business catering to weddings and parties, earning around Rs.40,000/- per month. One of his sons assists him at the shop, while another is employed in a well-paying job.



He is an elderly man of about 60 years of age and has stated that he wishes to live a normal and peaceful life.

Appellant/*Pawan Kumar* (married) resides with his wife and son. He is a graduate and had been employed as a Lower Division Clerk with the M.C.D., but his service was terminated in 2018 pursuant to the conviction in the present case. He presently earns rental income of approximately Rs.40,000/- per month. He is an elderly man of about 60 years of age.

Appellant/*Rahul* (40 years, married) resides with his mother, wife, daughter and brother. He has studied up to Class X and presently runs a paying guest facility, earning about Rs.50,000/- per month. He was around 19 years old at the time of the incident. He has a young daughter aged about 4 years.

18. All four appellants are reported to be of satisfactory economic condition, residing in semi-urban localities with adequate amenities and hygienic surroundings. They are stated to be physically and mentally fit, of normal social behaviour, and polite in their interactions. 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 all four appellants.

19. 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 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 being¹. 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.”

20. Pertinently, in the present case, the conviction of the appellants has now been modified to Sections 324/451/34 IPC. None of these provisions prescribe a mandatory minimum sentence. In view of *Lakhvir Singh* (supra), this Court retains discretion to extend the benefit of probation to the appellants, provided the circumstances justify grant of such relief.

21. The latest nominal rolls dated 05.11.2025 in respect of all four appellants are on record. They reflect that, as on 07.05.2016, each appellant had spent approximately 2 months in custody before being released

¹ Lakhvir Singh & Ors. Vs. State of Punjab & Anr., (2021) 2 SCC 763



following suspension of their sentence vide order dated 05.05.2016. As already noted, none of the appellants have any criminal involvement other than the present case, and their conduct in jail has been reported to be satisfactory. All four appellants are reported to be economically stable, residing with their families in well-maintained neighbourhoods and leading disciplined lives. They have been described as polite in demeanour, socially well-adjusted, and enjoying the confidence and goodwill of their family members and neighbours, who have spoken favourably of their conduct and prospects of rehabilitation. The concerned Probation Officer has opined that all four appellants exhibit potential for reformation and are suitable for rehabilitation in society.

22. Considering the above and having regard to the facts and circumstances of the case, this Court is of the view that no purpose would be served by requiring the appellants to undergo further incarceration. The object of the Probation Act, which seeks to reform and reintegrate first-time offenders into society, would be best served by affording the appellants an opportunity to demonstrate their reformation.

23. Accordingly, in view of the judgment of conviction modified hereinabove, the impugned order on sentence is also modified to the extent that the appellants are granted the benefit of probation under Section 4 of the Probation Act for a period of 1 year, on their furnishing probation bonds in the sum of Rs.10,000/- each, with one surety of the like amount each, to the satisfaction of the Trial Court within a period of six weeks.

24. The appellants shall remain under the supervision of the concerned Probation Officer for a period of 1 year, and shall report before the Probation Officer once every month. It is made clear that in the event 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 appellants shall be liable to undergo the remaining portion of the sentence as awarded by the Trial Court.

25. With the above directions, the present appeals stand disposed of.

26. Subject to furnishing probation bonds as directed above, the respective personal bonds furnished by the appellants against suspension of their sentences stand cancelled and their sureties are discharged.

27. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

NOVEMBER 7, 2025

nb