



2025:DHC:11727



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

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Date of Decision: 15.12.2025

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CRL.A. 569/2016

NANHE

.....Appellant

Through: Counsel for appellant, appearance not given.

versus

THE STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with SI Johny Kumar, PS Uttam Nagar

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CRL.A. 570/2016

SURENDER

.....Appellant

Through: Mr. Gurpreet Singh and Mr. Harsh Yadav, Advocates

versus

THE STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellants seek to assail the judgment of conviction dated 27.04.2016 and the order on sentence dated 30.04.2016, passed by the learned Additional Sessions Judge-04 (West), Tis



Hazari Courts, Delhi, in Sessions Case No. 271/14, arising out of FIR No. 50/2012, registered at Police Station Uttam Nagar, for offences punishable under Sections 325/308 read with Section 34 IPC.

2. Vide the order on sentence dated 30.04.2016, the appellants were sentenced to undergo Simple Imprisonment for a period of two years with fine of Rs.10,000/- each for the offence under Section 325/34 IPC, in default payment of fine they were directed to undergo simple imprisonment for 3 months. Further they were directed to undergo, Rigorous Imprisonment for a period of three years with fine of Rs. 20,000/- each for the offence under Section 308/34 IPC, in default of payment of fine, they were directed to undergo 6 months simple imprisonment. All sentences were directed to run concurrently, with benefit of Section 428 Cr.P.C.

3. During the pendency of the appeal, the substantive sentence imposed upon the appellants was suspended vide separate orders both dated 10.06.2016, and the appellants were released on bail.

4. The prosecution case, briefly stated, is that on the night of 29.01.2012, the complainant Vikram Kumar (PW-1) and his brother Vikas Kumar (PW-2) were allegedly assaulted by the appellants with *dandas* near the premises where the parties resided, on the issue of urination near the property. It was alleged that the assault resulted in grievous injuries to both the complainant and his brother, with the latter having sustained a head injury.

In support of its case, the prosecution examined ten witnesses, including the injured witnesses PW-1 and PW-2, who deposed regarding the incident and attributed specific roles to the appellants. The medical evidence, including the MLCs of the injured persons, was proved through



PW-7, and the remaining witnesses were police and formal witnesses relating to investigation, arrest, recovery, and registration of FIR.

5. In their statements under Section 313 Cr.P.C., the appellants denied the allegations and claimed false implication. No defence evidence was led. The Trial Court, upon appreciation of the oral and documentary evidence, held that the prosecution had proved its case beyond reasonable doubt. The learned Trial Court concluded that the injuries sustained by PW-1 fell within the ambit of Section 325 IPC, while the injuries sustained by PW-2 attracted Section 308 IPC, and accordingly convicted the appellants under Sections 325/308 read with Section 34 IPC.

6. Upon re-appraisal of the record, this Court finds no reason to interfere with the findings of the Trial Court insofar as the conviction of the appellants under Sections 325/308 read with Section 34 IPC.

7. Learned counsel appearing for the appellants, on instructions, submits that the appellants are not involved in any other criminal case. He further submits that the appellants do not wish to press the appeal on merits and confine their prayer to the limited aspect of release on probation. It is submitted on behalf of appellant *Surender* that the fine amount stands deposited and a receipt thereof is handed over and taken on record. With respect to appellant/ *Nanhe*, his son is present in person in court and it is submitted that *Nanhe* is bedridden, aged 70 years and is suffering from paralysis.

8. Learned APP for the State, has handed over status reports, which are taken on record, which record that the appellants are not reported to be involved in any other case.



9. Pursuant to the directions of this Court, Social Investigation Reports (SIRs) have been submitted in respect of the appellants.

10. The Social Investigation Report submitted in respect of appellant/*Nanhe* records that he is a 70-year-old married man, residing with his family at A-62, Gali No. 3, Vijay Nagar, Mohan Garden, Delhi. The report notes that the appellant is illiterate, is a senior citizen, and is presently physically, having age-related ailments, as he is stated to be largely confined to bed rest. The SIR records that the appellant belongs to a modest socio-economic background, and is completely dependent on his children for his sustenance. Their total family income is stated to be Rs.22,000/-. His family members have been interviewed and have spoken positively about his behaviour and conduct, stating that he maintains normal social relations within the neighbourhood. The neighbours have also expressed a positive attitude towards the appellant and have not reported any adverse conduct. The report notes that there is no previous institutional or criminal record against the appellant. It further records that the appellant has been facing the present criminal proceedings since 2012, which has caused him mental and social stress. The Probation Officer observes that the appellant has shown a positive attitude towards reform, has assured that he will maintain peace and good behaviour in future, and concludes that there exists a reasonable likelihood of reformation and rehabilitation. The SIR, accordingly, recommends that the appellant is suitable to be released on probation under supervision.

11. The SIR submitted in respect of appellant/*Surender* records that he is a 59-year-old married man, residing at D-10/11, Kiran Garden, Uttam Nagar, Delhi, along with his wife, son, daughter-in-law and two minor



grandsons, in his own well-built house situated in a developed locality with basic civic amenities. It is noted that the appellant has studied up to Class XII and has a stable source of income through rental earnings, stated to be approximately Rs.1,00,000/- per month, rendering the economic condition of the family satisfactory. The report records that the appellant maintains normal social behaviour, speaks politely, and exhibited a balanced and normal temperament during interaction. He is stated to be physically and mentally fit and spends most of his time with his family. The family members as well as neighbours have spoken positively about his conduct and behaviour, and no adverse social influences or criminal antecedents have been reported. The Probation Officer notes that the appellant has been facing trial since 2012, has suffered social and mental strain during this period, and shows good prospects of rehabilitation and reformation. The SIR accordingly recommends that the appellant is suitable for release on probation under supervision.

12. 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."

13. Pertinently, it is noted that neither Section 325 IPC nor Section 308 IPC prescribes any mandatory minimum sentence. The punishment provisions permit the Court to award imprisonment, fine, or both. It is well settled that the provisions of the Probation of Offenders Act, 1958 operate in harmony with the penal statute, and that the benefit of probation may be extended in all cases where the law does not expressly prohibit its application or mandate a compulsory minimum term of incarceration. In the absence of any statutory bar in respect of the offences in question, this Court retains the discretion to consider the grant of probation, subject to the facts and circumstances of the case. Having regard to the clean antecedents of the appellants, the favourable observations recorded in the Social Investigation Reports, the positive statements of family members and neighbours, the long pendency of the proceedings since 2012, and the absence of any adverse material on record, this Court is persuaded to adopt a reformatory approach.



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14. Accordingly, while upholding the judgment of conviction dated 27.04.2016 and the order on sentence dated 30.04.2016, the substantive sentence of imprisonment imposed upon the appellants is modified to the extent that the appellants are directed to 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, to the satisfaction of the Trial Court, within a period of four weeks from today. The appellants shall maintain peace and good behaviour for a period of one year of probation and shall not commit any offence.

15. It is made clear that in the event of any breach of the conditions of probation, or involvement in any other offence during the period of probation, the benefit granted under this order shall stand revoked, and the appellants shall be liable to undergo the remaining portion of the substantive sentence as originally awarded by the Trial Court.

16. The appeals stands disposed of in the above terms.

17. The bail bonds furnished on behalf of the appellants shall stand, and the sureties shall stand discharged accordingly.

18. A copy of this judgment be communicated to the learned Trial Court, the concerned Probation Officer, and the concerned Superintendent of Jail, for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 15, 2025/kb