



2025:DHC:10575



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 17.11.2025

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CRL.A. 809/2018, CRL. MA 29320/2018

STATE (G.N.C.T. OF DELHI)

.....Appellant

Through: Ms. Shubhi Gupta, APP for State with
WSI Bimla P.S. Shahbad Dairy

versus

PANKAJ & ORS.

.....Respondents

Through: Ms. Gayatri Nandwani, Advocate
(DHCLSC) with Ms. Mudita Sharda
and Mr. Adrian Abbi, Advocates.

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CRL.L.P. 297/2018

STATE (G.N.C.T. OF DELHI)

.....Petitioner

Through: Ms. Shubhi Gupta, APP for State with
WSI Bimla P.S. Shahbad Dairy

versus

PANKAJ & ORS

.....Respondents

Through: Ms. Gayatri Nandwani, Advocate
(DHCLSC) with Ms. Mudita Sharda
and Mr. Adrian Abbi, Advocates.**CORAM:****HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)****CRL.M.A. 29320/2018 in CRL.A.809/2018 (condonation of delay)**

1. By way of present application, the appellant/applicant seeks condonation of delay of 105 days in filing CRL.A. No. 809/2018.



2. For the reasons stated in the application, the same is allowed and the delay of 105 days in filing the said appeal is condoned.

3. In view of the above, the present application stands disposed of.

CRL.L.P. 297/2018

1. The present leave petition was filed by the appellant/State assailing the judgment of conviction dated 17.01.2018 and the order on sentence dated 31.01.2018 passed by the learned Special Judge (NDPS), North District, Rohini Courts, Delhi, in proceedings arising out of FIR No. 98/2012 registered at P.S. Shahbad Dairy under Sections 341/323/325/379/506/34 IPC.

2. The relief sought was modification of the impugned judgment of conviction to the effect of convicting the respondents under Sections 392/394/34 and 397 IPC instead of under Sections 323/325/34 IPC.

3. Respondent no. 1/*Pankaj* and respondent no. 2/*Pradeep* have expired, and the factum of their death stands verified. The present leave petition *qua* the said respondents, therefore, stands abated.

4. Learned APP for the State submits that the Trial Court, by application of Section 222 Cr.P.C. convicted the respondents under Sections 323/325/34 IPC, the said offences being minor in comparison to those under Sections 394/397 IPC. It is contended that the Trial Court did not fully appreciate the consistent testimonies of the complainant and his brother, both injured witnesses, who attributed to respondent no. 3 the use of an iron punch resulting in a grievous injury. The medical evidence is stated to corroborate this version, and it is argued that the ingredients of the offences under Sections 392 and 394 read with Section 34 IPC stand duly established. Learned APP further submits that the use of an iron punch during the



commission of the said robbery, coupled with the grievous injury caused, also squarely attracts a conviction under Section 397 IPC.

5. In view of the submissions put forth, the matter requires consideration and merits being heard.

6. Accordingly, the present petition seeking leave to appeal is allowed and the appeal is directed to be numbered.

CRL.A. /2025 (to be numbered); and CRL.A. 809/2018

1. By way of the present appeals, the appellant/State is seeking conviction of the respondents under Sections 392/394/34 and 397 IPC instead of under Sections 323/325/34 IPC; and enhancement of the sentence imposed upon the three respondents by the Trial Court to the prescribed maximum.

2. The Trial Court convicted the respondents herein of the offences under Sections 323/325/34 IPC and vide the impugned order on sentence, released them on probation of good conduct for a period of 1 year, subject to each furnishing a personal bond of Rs.10,000/- with one surety of the like amount.

3. As noted above, the present appeals *qua* respondent nos. 1 and 2 stand abated and the present judgment accordingly focuses on only respondent no. 3/*Parkash*.

4. The case of the prosecution, briefly stated, is that on 18.02.2011 at about 7:30 PM, the complainant/*Bharat* along with his brother/*Shatrughan* had gone to attend the wedding of the daughter of one *Pappu*, taking place in their locality itself. After attending the marriage, when they were on their way back to their house, at about 8:15 PM, they were intercepted by the respondents herein, out of whom respondent no. 1/*Pankaj* demanded money



from them. On their refusal, respondent no. 3/*Parkash*, who was wearing an iron punch on his right hand, hit the complainant on his jaw, due to which he fell to the ground. *Pankaj*, then, hit *Shatrughan* on his head with a piece of brick. Respondent no. 2/*Pardeep* gave blows to the complainant with a *danda/lath* and removed Rs.5,000/- from his pocket. Thereafter, the respondents ran away from the spot, someone informed the police, and the injured persons were removed to the hospital in PCR van.

5. The prosecution, in support of its case, examined 16 witnesses, including the complainant/*Bharat* (PW-2) and his brother/*Shatrughan* (PW3). Dr. *Yudhvir Singh*, examined as PW-5, proved the MLCs of the complainant and his brother and also proved his opinion regarding the nature of the complainant's injuries. The remaining witnesses were police officials, medical witnesses, and other witnesses, whose testimonies were largely formal in nature.

6. The complainant/*Bharat*, examined as PW-2, gave a detailed account of the incident dated 18.02.2011, thereby setting up the prosecution version. As for the facts after the altercation in question, he stated that someone made a call to the PCR and the police thereafter removed him and his brother to the hospital. His brother was examined at the said hospital, however, the witness was advised to go to some other hospital. Interestingly, the witness deposed that he was taken to the other hospital by and in the vehicle of respondent no. 1/*Pankaj*.

During cross-examination, the witness denied suggestions regarding the non-existence of the wedding of *Pappu's* daughter. He stated that the wedding *pandal* had been set up outside *Pappu's* house, which was 60 steps away from their own. The witness denied that he and his brother had been



playing cards with the respondents and that a quarrel had arisen between the parties on account of non-payment of money. He denied that respondent no. 3/*Parkash* had dealt a blow to the face of the complainant's brother, while wearing an iron fist; he was confronted with his complaint (Ex. PW-2/A) which recorded so. He denied the suggestion that the respondents had not snatched Rs.5,000/- from his pocket; he was confronted with his complaint which records that the Rs.5,000/- were snatched from the pocket of his brother. He stated that no other public persons were present at the spot at the time. He deposed that he works as a labourer, earning Rs.6,000-7,000/- per month, depending upon the availability of work. He stated that the Rs.5,000/- in question snatched were the arrears of his wages for the last 10-15 days received by him.

7. The complainant's brother, injured witness *Shatrughan*, examined as PW-3, corroborated the testimony of the complainant on all material aspects, with the notable addition of this witness deposing that the respondents, while fleeing after the altercation, had threatened to kill the witness and his brother if a complaint was lodged against them. The witness also differed slightly from the complainant's testimony by stating that the complainant was taken to the hospital by the father of respondent no. 1/*Pankaj*, and not *Pankaj* himself.

8. Dr. *Yudhvir Singh*, examined as PW-5, proved the MLC of *Shatrughan* as Ex. PW-5/A and the MLC of *Bharat* as Ex. PW-5/B, both prepared by him. He also opined the injuries of *Bharat* to be grievous in nature on the said MLC, and proved the same. In cross-examination, he stated that *Shatrughan* did not get admitted into the hospital and was discharged after 1-2 hours.



9. The statement of all three respondents were recorded under Section 313 Cr.P.C., wherein they denied all the allegations put to them and claimed false implication.

10. One Sh. *Dharmender*, a neighbour of the respondents, was examined as DW-1. The said witness put forth background of a dispute between the parties arising out of a sarcastic remark made while they were playing cards together. DW-1 deposed that on the date of the incident, *Bharat* made a pointed remark against respondent no. 1/*Pankaj*, due to which he became angry and started abusing *Bharat*, which escalated into a “*hathapai*”, in which respondent no. 3/*Parkash* also got involved. He stated that the altercation was eventually sorted out and all involved persons returned to their respective houses.

During cross-examination, he stated that he had appeared before the Court on the request of respondent/*Pankaj* and that he knew the respondents, being their neighbour. He further admitted that he had very cordial relations with the respondents and they even had drinks together.

11. A material plank of the Trial Court’s reasoning in returning a finding of guilt only under Sections 323 and 325 read with Section 34 IPC, and in declining to convict the respondents of the graver offences alleged was that the complainant, being a labourer concededly earning Rs.6,000/- to Rs.7,000/- per month, had failed to satisfactorily establish the source of the Rs.5,000/- allegedly taken from him. This line of reasoning is fallacious and cannot be sustained. The complainant had categorically stated that the said amount represented arrears of wages for the preceding 10 to 15 days. The law does not cast upon an injured witness the burden of proving with precision the source of a small amount of cash carried on his person at the



time of the incident. The failure to produce documentary evidence for payment in such circumstances cannot be elevated into a ground to discard an otherwise cogent and natural version of events.

12. The complainant and his brother, both injured witnesses, consistently attributed to respondent no. 3/*Parkash* the role of delivering a blow to the complainant's jaw while wearing an iron punch. Their ocular versions stand corroborated by the medical evidence on record. The suggestion that the altercation arose merely out of a quarrel during a card game, as projected by DW-1, does not inspire confidence and stands contradicted by the nature of injuries as well as the consistent testimonies of the injured witnesses.

13. The combined effect of the ocular and medical evidence demonstrates that the incident was not a scuffle between friendly acquaintances but a concerted assault wherein grievous hurt was intentionally caused to facilitate the taking of money from the complainant's possession. The ingredients of Sections 392 and 394 read with Section 34 IPC stand satisfied. Further, the complainant has specifically deposed that respondent no. 3 used an iron punch while delivering the blow on his jaw, and the MLC records the resultant injury as grievous. The use of the iron punch in the course of committing robbery, and the causing of grievous injury thereby, squarely attracts Section 397 IPC. The acquittal of respondent no. 3 for the offences under Sections 392/394 read with Section 34 and Section 397 IPC is, therefore, unsustainable and is set aside. Respondent no. 3/*Parkash* is accordingly held guilty and convicted of the said offences.

14. Now, the matter turns to the question of sentencing. In the facts of the present case, respondent no. 3/*Parkash* is sentenced to undergo RI for 2 years along with a fine of Rs.2,500/- for the offence under Section 392 IPC;



RI for 3 years along with a fine of Rs.2,500/- for the offence under Section 394 IPC; and RI for 7 years along with a fine of Rs.5,000/- for the offence under Section 397 IPC. All sentences shall run concurrently.

15. During previous hearings, learned counsel for respondent no. 3, on instructions from the answering respondent who was present in person and duly identified by the I.O., prayed that the respondent be granted the benefit of probation under the Probation of Offenders Act, 1958 (hereinafter “Probation Act”).

16. On the request of learned counsel for respondent no. 3, a probation report was requisitioned.

17. In this regard, learned counsel states that the FIR in the present case dates back to the year 2012; that the respondent has no criminal antecedents apart from the present matter; that he had earlier completed the period of probation imposed by the Trial Court without any lapse or adverse report; and that he has, since then, maintained a stable, law-abiding lifestyle. The respondent’s Gate Pass is handed over and the same is taken on record.

18. The complainant/*Bharat* is present in Court and is identified by the I.O. He states that he has no grievance left against the accused persons, including respondent no. 3, and has no objection if a lenient view is taken. He has also handed over his Gate Pass, which is taken on record.

19. The learned APP for the State, on instructions from W/SI *Bimla*, has confirmed that respondent no. 3 is not involved in any criminal cases apart from the present one.

20. The Probation Report bearing the signatures of Mr. *Arun Kumar*, Probation Officer, Rohini Courts Complex, is on record. The report records that during his prior period of probation, as a result of the impugned order



on sentence, he maintained regular contact with the then Probation Officer and his conduct and behaviour remained satisfactory throughout, and no adverse report or complaint was received against him during the period. It further confirms that as per latest inquiry and verification, the respondent was not found to be involved in any criminal activity or undesirable behaviour. The respondent is an e-rickshaw and school cab driver, earning his livelihood through honest means and has continued to maintain a law-abiding lifestyle and has successfully reintegrated into society as a responsible individual. He supports his family financially and is known to be punctual, sincere, and diligent in his work. He also maintains cordial relations with other community members, and is socially well-adjusted. The respondent is stated to have exhibited a consistent attitude of reformation and responsibility, has expressed remorse for his past actions, and has demonstrated a genuine commitment to self-improvement. The Probation Officer has stated that there are no indications of any relapse into undesirable habits or associations, and accordingly recommended that the Court may take a lenient and sympathetic view in the respondent's favour.

21. 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 of Offenders Act, 1958 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 of Offenders Act came into being. The relevant extract is reproduced



hereunder:-

“16. A more nuanced interpretation on this aspect was given in CCE v. Bahubali. 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. It is in this context; it was observed in State of M.P. v. Vikram Das 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 Punjab 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...”

22. In view of *Lakhvir Singh* (supra), this Court retains the discretion to extend the benefit of probation to the respondent in the present case, if the circumstances justify grant of such relief. This Court is of the view that sentencing must not be approached mechanically, but by balancing the nature of the offence with the prospects of reform.

23. In cases such as the present, where the convict is a first-time offender, has remained incident-free for more than a decade, and has demonstrated a stable, law-abiding lifestyle, insistence on further incarceration would not advance the purposes of criminal justice.

24. It is also most pertinent to note that the complainant has stated that he has no grievance left against the respondent and has no objection to a lenient view being taken. Nothing has been brought to the notice of this Court to



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suggest that the respondent failed to comply with the earlier terms of probation or was involved in any other offence thereafter. The Probation Report records that the respondent maintained regular contact with the Probation Officer, exhibited remorse, supported his family, and reintegrated into society in a stable and responsible manner.

25. In these circumstances, and keeping in view the long passage of time since the incident of 2011, the satisfactory completion of the earlier period of probation imposed by the Trial Court, the conduct and reformation noted in the Probation Report, this Court is of the considered view that directing the respondent to undergo further incarceration or even a second spell of probation would serve no useful purpose. The sentence imposed upon the answering respondent in this judgment is modified to the extent that the period of probation already undergone by respondent no.3 in compliance with the Trial Court's order shall be treated as sufficient, and no further incarceration or probationary supervision is deemed necessary.

26. The present appeals are disposed of in the above terms.

27. A copy of this judgment be communicated to the Trial Court and the concerned Probation Officer.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 17, 2025/nb