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

+ CRL.A. 973/2016

GULAM GAUSH

.....Appellant

Through: Mr. Gaurav Saharawat and Mr. Sahil
Sharma, Advocates

versus

STATE (GNCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Dinesh PS Badarpur

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+ CRL.A. 974/2016

KASIM

.....Appellant

Through: Mr. Gaurav Saharawat and Mr. Sahil
Sharma, Advocates

versus

STATE (GNCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Dinesh PS Badarpur

21

+ CRL.A. 975/2016

HASIM

.....Appellant

Through: Mr. Gaurav Saharawat and Mr. Sahil
Sharma, Advocates

versus

STATE (GNCT OF DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State
with SI Dinesh PS Badarpur



CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

02.12.2025

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1. The present batch of appeals arises from a common judgment dated 19.09.2016 and order on sentence dated 20.09.2016 passed by the learned Additional Sessions Judge-04 & Special Judge (NDPS) Act, South-East District, Saket Courts, Delhi, in Sessions Case No. 54/2013 arising out of FIR No. 64/2012 registered at P.S. Badarpur under Sections 341/324/34 IPC.

Vide the impugned order on sentence, the appellants were each directed to undergo 1 year SI alongwith payment of fine of Rs.2,000/-, in default whereof they would each undergo further SI for a period of 90 days, for the offence punishable under Sections 324/34 IPC. 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 orders dated 19.10.2016.

2. The prosecution case, briefly stated, is that on 29.02.2012 at around 8:00 PM, the complainant/*Azad* along with his friends *Surender @ Silender* and *Vikas* was going to his house at *Gautam Puri* on a motorcycle. When they reached *Gautam Puri mor*, the appellants were found standing there. The complainant asked them to give way, but they refused to do so; and upon the complainant again asking for them to get aside, the appellants started abusing and beating him. It is alleged that the appellants, in furtherance of their common intention, voluntarily caused grievous hurt to the complainant on his back by means of a sharp knife-like weapon.



3. The prosecution examined 6 witnesses in support of its case. The complainant/PW-1 narrated the incident in detail and identified all three appellants in Court. *Sh. Rajender Singh*, Record Clerk from AIIMS Trauma Centre, proved the MLC of the complainant (Ex. PW-6/A) by identifying the handwriting and signatures of the examining doctor, *Dr. S. Raghvender*, who had left the services of the hospital and whose whereabouts were not known. The remaining witnesses are police officials who deposed as to various aspects of the investigation.

4. In their respective statements recorded under Section 313 Cr.P.C., the appellants denied all incriminating evidence put to them *in toto* and claimed false implication. However, no defence evidence was led.

5. The complainant duly identified all three appellants in Court, and upon consideration of the material on record, the Trial Court held the testimony of the complainant to be trustworthy and reliable. None of the appellants, even in their statements under Section 313 Cr.P.C., had denied their presence or occurrence on the given date, time, and place. It was therefore held that the presence of the appellants at the spot at the time of the incident and occurrence of incident stood duly proved. The non-recovery of the weapon of offence was held to not be fatal to the prosecution case as the injuries sustained by the complainant were duly explained in the MLC. Notably however, the Trial Court observed that, since the concerned doctor who had medically examined the complainant and prepared the MLC had not stepped into the witness box and tendered himself for cross-examination, the injuries of the complainant did not stand duly proved in accordance with the law. In view of the same, the Trial Court convicted the appellants under Sections 324/34 IPC instead of the charge-sheeted offences.



6. Upon examination of the record of proceedings and re-appraisal of the evidence, especially the testimony of the injured complainant who not only identified all three appellants in Court but also narrated the incident in question clearly and cogently; as well as the MLC of the complainant on record reflecting that grievous injuries were caused to him; this Court finds no reason to interfere with the well-reasoned conclusions of the Trial Court *qua* the conviction of the appellants under Sections 324/34 IPC. The same is accordingly upheld.

7. Learned counsel for the appellants, on instructions from the appellants who are present in person, states that the appellants have not been convicted in any other case and reiterates the appellants' prayer that they may be considered for grant of probation under the Probation of Offenders Act, 1958 ("Probation Act"). He further states that the fine imposed by the Trial Court has already been paid by the appellants.

8. Learned APP for the State, on instructions, confirms that the appellants, *Gulam Gaush* and *Hasim*, have no involvements other than the present case. A status report in this regard is already on record. Learned APP further states that while the appellant/*Kasim* has one other involvement (FIR No. 153/2010 registered at P.S. Badarpur under Sections 325/324/341/34 IPC), he was duly acquitted in the proceedings arising therefrom as the offences were compounded. In this regard, a copy of the order dated 09.04.2012 passed by the learned Judicial Magistrate concerned has been handed over in Court and is taken on record.

9. Pursuant to this Court's directions, Social Investigation Reports were requisitioned from the concerned Probation Officer for all three appellants and the same are on record. The said reports bear the signatures of Ms.



Shivani Bist, Probation Officer, Saket Courts.

10. As per the reports, appellant/*Gulam Gaush* (34-years-old, unmarried) resides with his mother, two brothers, and their respective families, earning approximately Rs.700/- per day through his newspaper supply business, which is the primary source of income for the family. He faces significant medical expenses, as one of his lungs was surgically removed following a knife attack, and he continues to suffer from health complications as a result of the same. His elderly mother is also undergoing long-term treatment at AIIMS for high blood pressure, diabetes, and paralysis, further adding to the financial strain on his family. His neighbours describe him as a very well-behaved person and his family have given a favourable and positive report about his behaviour & conduct.

Appellant/*Kasim* (36-years-old, married) resides with his father, wife, minor daughter, and two brothers, including one of the appellants herein, *Hasim*. The appellant/*Kasim*'s wife is a homemaker, and he sustains his family by working as an air-conditioner mechanic, which is a seasonal occupation that enables him to earn approximately Rs.1,000/- per day during the working months. His elderly father has been suffering from severe lung disease and cardiac ailments for the past 10 years. According to his neighbours, the appellant is helpful towards everyone and responsibly fulfils his family obligations.

Appellant/*Hasim* (30-years-old, married) resides with his wife and minor daughter in one room, while his aged father resides on the ground floor of their house, his elder brother *Anish* on the first floor of the house with his family, and his other brother, the appellant/*Kasim*, on the second floor of the house with his own family. Appellant/*Hasim* works as a painter



and electrician, earning about Rs.700/- per day. He maintains cordial relations with his family and neighbours, who have described him as having excellent behaviour. The family of the appellant is very supportive and sympathetic towards him and favours his behaviour to be positive. As stated before, the father of the appellants, *Kasim* and *Hasim*, is elderly, and has been suffering from severe lung disease and cardiac ailments for the past 10 years.

11. While all three appellants are from economically modest backgrounds, they are stated to be 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 three appellants.

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 has extended the benefits of the Probation Act even to convicts who had not completed the mandatory minimum sentence of 7 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

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



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, the conviction of the appellants in the present case is under Sections 324/34 IPC and there is no prescribed mandatory minimum sentence. In view of *Lakhvir Singh* (supra), this Court retains the discretion to extend the benefit of probation to the appellants, provided the circumstances justify grant of such relief.

14. All three appellants 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 three appellants show good prospects of reformation and are suitable for grant of probation.

15. 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.

16. Accordingly, the impugned order on sentence is modified to the extent that the appellants are granted the benefit of probation under Section 4 of the Probation Act for a period of 6 months, on their furnishing probation bonds in the sum of Rs.10,000/- each, with one surety of the like amount, to the satisfaction of the Trial Court, within a period of four weeks.

17. The appellants shall remain under the supervision of the concerned Probation Officer for a period of 6 months 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.

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

19. 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.

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

MANOJ KUMAR OHRI, J

DECEMBER 2, 2025

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