



\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 868/2017**

ISHTIYAK

.....Appellant

Through: Mr. Arun Kumar, Mr. Vipin Yadav
and Ms. Paridhi Kohli, Advocates.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Deepak PS Kotwali, Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.12.2025

%

1. By way of present appeal, the appellant seeks to assail the judgement of conviction dated 03.08.2017 and order on sentence dated 08.08.2017 passed by ASJ(Central), Tis Hazari Courts, Delhi, in SC no. 28501/16 arising out of FIR no. 815/2014 registered under Sections 308/323/34 IPC at P.S. Kotwali, Delhi.

2. Vide the impugned order on sentence, the appellant is sentenced to undergo RI for a period of 2 years alongwith fine of Rs.5,000/-, in default thereof would undergo SI for a period of 3 months for the offence punishable under Section 308. Further sentenced to undergo RI for a period of 3 months longwith fine of Rs.1,000/- for the offence punishable under Section 323 IPC. The benefit of Section 428 Cr.P.C. was granted to the appellant.



The sentence of the appellant was suspended during pendency of the present appeal by this Court vide order dated 02.11.2017.

3. Briefly put, the case of the prosecution is that on 15.01.2014 at about 11:45 PM, while the complainant and others were cleaning their shop, *Jago Mandal* went to a nearby shop to purchase gutka, where he had a scuffle with *Yamin*, who was residing in the same street. Thereafter, *Jago Mandal* returned to the shop. Shortly thereafter, *Yamin*, along with his brother *Yasin*, *Naeem*, and their associate *Ishtiyak*, came to the street outside the shop, where *Yamin* allegedly threatened to teach them a lesson. In the meantime, *Naeem* lifted a *palta* and moved it aimlessly, *Yasin* caught hold of *Amardeep*, and *Ishtiyak* exhorted by saying “*maar saale ko.*” *Naeem* then struck *Amardeep* on the head with the *palta*. Thereafter, *Ishtiyak* caught hold of *Jago Mandal* and *Naeem* again struck him on the head with the *palta*. As a result, both *Amardeep* and *Jago Mandal* sustained head injuries. The complainant handed over his mobile phone to a bystander, who informed the police by calling at 100 number, whereafter all the accused persons fled from the spot. It is further alleged that *Yasin*, *Yamin*, *Naeem* and *Ishtiyak* also assaulted the injured persons with fists, kicks and the *palta*. Consequently, an FIR was registered under Sections 308/323/34 IPC, and the injured persons were taken to LNJP Hospital for medical examination.

4. In support of its case, the prosecution examined 15 witnesses. The most material among them were the injured witnesses, *Mohd. Anis*, who was examined as PW-1, and *Deepak Jain*, who was examined as PW-2. *Sonu Jain*, the brother of the injured *Deepak Jain*, who reached the spot immediately after the incident and took him to the hospital, was examined as PW-10. Dr. *P. Ashwin Kumar*, who proved the MLCs of the injured, was



examined as PW-9, while Dr. *Deepak Agrawal*, who proved the CT scan report and opined upon the nature of injuries sustained by *Deepak Jain* to be grievous, was examined as PW-12. The remaining witnesses were formal in nature and deposed regarding various aspects of the investigation.

In their statement recorded under Section 313 Cr.P.C, the appellant claimed innocence and false implication. He did not lead any evidence.

5. A perusal of the record indicates that the testimonies of PW-2, PW-4 and PW-7 are cogent, credible and inspire confidence. PW-2 and PW-4, both injured witnesses, have consistently deposed that the appellant, along with the co-accused, reached the spot pursuant to an earlier scuffle and actively participated in the assault. PW-2 has categorically stated that appellant exhorted the co-accused by saying “*maar saale ko*”. PW-4 has fully corroborated this version. The testimony of PW-7 further corroborates the role of the appellant by confirming his presence, participation and common intention in the assault. The ocular evidence stands duly corroborated by the medical evidence. As per the MLCs exhibited as Ex. PW5/A and Ex. PW5/B, the injured *Amardeep* and *Jago Mandal* sustained lacerated wounds on the scalp, and the subsequent medical opinion proved through PW-3 opines the injuries to be grievous and dangerous in nature. The weapon of offence, namely the iron *palta*, was also opined to be capable of causing such injuries. The testimonies of the injured witnesses are mutually corroborative and, when read with the medical evidence, clearly establish that the appellant, acting in furtherance of common intention, facilitated and instigated the infliction of grievous head injuries upon the victims.

Having considered the material placed on record, this Court concurs



with the findings of the trial court and finds no grounds to interfere with. Consequently, the conviction of the appellant is upheld qua the offence under Sections 308/323/34 IPC.

6. Learned counsel for the appellant, on instructions from the appellant who is present in Court, submits that the appellant does not wish to press the appeal on merits and confine his prayer to seeking release on probation. It is prayed that the benefit of Section 4 of the Probation of Offenders Act, 1958 be extended to him.

7. Learned APP for the State, on the last date of hearing, handed over a copy of the status report which was taken on record, as per which the appellant has not been convicted in any other case.

8. Pursuant to the directions of this Court, the Social Investigation Report of the appellant has been handed over in Court from the Probation Officer, Karkardooma Courts, Delhi, which in turn has been forwarded by the concerned District Probation Officer, Bulandsher, Uttar Pradesh. As per the reports, appellant is a resident of Village Barvandpur P.S. Gulawti District Bulandshahar U.P., has obtained education till the 5th standard. He is reported to be mentally fit but has a physical ailment of Anal Fistula (*Bhagandar*) since the year 2024, for which he is currently being treated. Since the past 20-22 years, the appellant is the sole breadwinner of his family, he has been working in Chadni Chowk in Old Delhi as a tailor and manages to earn Rs.16,000/- per month. He owns a 100 gaz house in his village that he visits occasionally, where his entire family, comprising of his aged parents, wife, and three children reside. The family does not own any farmland in the village either, thereby relying solely on the appellant's income. It is reported that the appellant has no prior criminal records and are



engaged in farming activities and cattle rearing. The report records a positive assessment of the appellant.

9. 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.”

10. From above, it is pertinent to note that Sections 308/323/34 IPC do not prescribe any minimum sentence. The IPC, having been enacted prior to the coming into force of the Probation of Offenders Act, must be read



harmoniously with the latter statute. The bar on the application of the Act arises only where a special statute enacted after 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause. In the present case, the conviction is under Sections 308/323/34 IPC. Given that even otherwise, the offence does not carry a mandatory minimum sentence, the Court retains discretion to extend the benefit of probation to the appellant, provided the circumstances justify such relief.

11. Having regard to the nature of the offence and the overall findings of the Social Investigation Report, as well as the legal position *qua* the applicability of Probation of Offenders Act as iterated above, this Court is persuaded to adopt a reformatory approach. The appellant has been living peacefully in society, has maintained a stable occupation, and is the sole breadwinner of his family. The Probation Officer's report further affirms his good conduct, normal social behavior, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the sentence imposed upon the appellant is modified to the extent that he shall 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/-, with one surety in the like amount to the satisfaction of the Trial Court within five weeks from today. They shall maintain peace and good behaviour for a period of one year and shall not commit any offence during the period of probation.

13. The appeal and all pending applications, if any, stand disposed of in the above terms.



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

MANOJ KUMAR OHRI, J

DECEMBER 18, 2025/rd