

(2025) 12 DEL CK 0009

Delhi HC

Case No: Criminal Appeal No. 21 Of 2018, Criminal Miscellaneous Application No. 216 Of 2018

Satish & Ors

APPELLANT

Vs

State Of Nct Of Delhi

RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 313, 428
- Indian Penal Code, 1860- Section 34, 308, 397
- Probation of Offenders Act, 1958- Section 4

Hon'ble Judges: Manoj Kumar Ohri, J

Bench: Single Bench

Advocate: Sweta Kadyan, Abhishek Kadyan, Chetna Kadyan, Pradeep Gahalot

Final Decision: Disposed Of

Judgement

Manoj Kumar Ohri, J

1. By way of the present appeal the appellants seeks to assail the judgement of conviction dated 21.11.2017 and the order on sentence dated 25.11.2017 passed by District & Sessions Judge(North), Rohini Courts, Delhi in Sessions Case No. 58248/2016 arising out of FIR No. 204/2013, registered under Sections 308/34 IPC at P.S. Jahangir Puri, Delhi.

2. Vide the impugned order on sentence, the appellants were each convicted for the offence punishable under Section 308/34 IPC and sentenced to undergo RI for a period of 30 months alongwith fine of Rs.1,000/- each in default whereof to undergo SI for a period of 1 month. A compensation of Rs.1,000/- each shall be payable by the appellants to the victims/injured persons. The benefit of Section 428 Cr.P.C. was granted to both the appellants.

The sentences of the appellants were suspended during pendency of the present appeal by this Court, vide order dated 02.05.2019.

It is further noted that the appeal stands abated against appellants-**Jai Kishan and Naveen Singh**, vide order dated 19.11.2025. The appeals survives only against appellants- **Satish and Sudhir@Kala**

3. Briefly put, the case of the prosecution is that on 17.06.2013, information regarding the incident was recorded vide DD No. 31A, pursuant to which ASI Hafizur Rehman, alongwith Ct. Mangal Chand, reached H. No. 89, Gali No. 4, Harijan Colony, Bhalswa Village, Delhi, where the complainant Narender Kumar was found and his statement was recorded. He stated that at about 9:30PM, while he was present at his house, he called his friend Jeetu to enquire about his well-being. Instead of Jeetu, another person answered the call, abused him, and threatened to come to his house and beat him. Upon being asked, the complainant disclosed his address. Thereafter, at about 10:30PM, accused Satish and Naveen, whom the complainant knew well, came to his house. Satish called the complainant downstairs and enquired whether the last digits of his phone number were 500, to which the complainant replied in the affirmative. At that point, Naveen caught hold of the complainant and Satish struck him on the head with an iron rod, causing bleeding. On hearing the complainants cries, his brother Devender, mother, and sister came out to intervene. It is further alleged that Satish then called his brother Jai Kishan and nephew Sudhir, who arrived at the spot; Jai Kishan was carrying an iron rod and Sudhir a danda. Jai Kishan hit Devender with the iron rod, while Sudhir inflicted danda blows on the complainants sister and mother. Upon raising hue and cry, the accused persons fled from the spot. The complainant further stated that he dialled 100, pursuant to which the police arrived and took the injured persons to the hospital.

4. In support of its case, the prosecution examined 12 witnesses to prove its case. The most material among them was the complainant, Narender Kumar, who was examined as PW-4. The sister of the complainant, Meena, who was examined as PW-3. Mother of the complainant, Veer Vati, who was examined as PW-5. Brother of the complainant, Devender, who was examined as PW-6. Dr. Neeraj Chaudhary, who proved the MLCs, was examined as PW-12. The remaining witnesses were formal in nature and deposed as to various aspects of the investigation.

In their statement recorded under Section 313 Cr.P.C, the appellants claimed innocence and false implication.

5. A perusal of the record indicates that the testimony of the complainant is cogent, credible and inspires confidence. The complainant correctly identified the appellant-Satish as the person who struck him on the head with an iron rod, he further deposed that upon the arrival of his family members, appellant- Satish called Jai Kishan and Sudhir @ Kala, whereupon appellant-Sudhir hit PW-3 and PW-5 with a

danda. The version of PW-4 stands duly corroborated by PW-3, PW-5 and PW-6, all of whom are injured eyewitnesses. PW-12, proved the MLCs and opined that the injuries were consistent with assault by hard blunt objects such as an iron rod and danda. It is further noted that the injuries were opined to be simple in nature but were inflicted on vital parts of the body. It is further noted that appellant-Satish had extended a prior threat and thereafter reached the complainants house with an iron rod. Nothing material was brought on record by the defence to substantiate the plea of false implication.

Having considered the material placed on record, this Court concurs with the findings of the trial court and finds no grounds to interfere with the same are made out. Consequently, the conviction of the appellant is upheld qua the offence under Sections Section 308/34 IPC was upheld.

6. Learned counsel for the appellants, on instructions from the appellants who are present in Court, submits that the appellants do not wish to press the appeal on merits and confine their 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 them. It is further submitted that the fine and compensation imposed by the Trial Court on both the appellants already stands paid, and the receipt of the same are placed on record.

7. Learned APP for the State submits that the appellants are not involved in any other case and in this regard a status report has already been placed on record.

8. Pursuant to this Courts directions, the Social Investigation Report of the appellants has been received from concerned Probation Officer, Rohini Courts, Delhi. The report is handed over in Court and taken on record.

As per the report concerning appellant/Satish Kumar, he is 54 years of age, uneducated, and resides at H. No. 85, Gali no.4, Harijan Colony, Bhalswa Village, Delhi. The condition of the residence is average. The appellant is working as a labourer on daily wages and earns approximately Rs.12,000/- per month. He is the sole breadwinner of his family comprising of his wife, son, daughter-in-law and 2 grandsons. His only son suffers from T.B. and is on regular medications. It is also noted that he is not involved in any other case. It is further noted that his behaviour is described as normal and socially appropriate and he has a habit of smoking.

As per the report concerning appellant/Sudhir@Kala, he is about 33 years of age, studied upto 8th class and resides at H. No. 85, Gali no.4, Harijan Colony, Bhalswa Village, Delhi. The condition of the residence is average. The appellant is working as a labourer on daily wages and earns approximately Rs.10,000-12,000/- per month. He is the sole breadwinner of his family comprising of his aged mother, wife, 4 minor children. It is also noted that he is not involved in any other case. It is further noted that his behaviour is described as normal and socially appropriate and he has a habit of smoking.

Both the appellants are reported to be of poor economic background and having been facing trial since 2013. They are stated to be of normal social behaviour. 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 both the appellants.

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 the present case pertains to Section 308/34 IPC, which does 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 Section 308 IPC read with Section 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 appellants, provided the circumstances justify such relief.

11. Having regard to the nature of the offence, 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 appellants have been living peacefully in society, has maintained a stable occupation, and are the sole breadwinners of their respective families. The Probation Officers report further affirms their good conduct, normal social behaviour, and positive inclination towards reformation.

12. Accordingly, while upholding the judgment of conviction and order on sentence passed by the learned Trial Court, the substantive sentence of imprisonment imposed upon the appellants is modified to the extent that they 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/- each, with one surety in the like amount each to be satisfaction of the trial court within four weeks from today. They shall maintain peace and good behaviour and shall not commit any offence during the period of probation.

13. 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. In case 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 concerned appellant shall be liable to undergo the sentence as awarded by the Trial Court.

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

15. A copy of this judgment be communicated to the Trial Court which shall communicate a copy of this order to the concerned Probation Officer, through the concerned IO/SHO for necessary compliance.

16. A copy shall also be communicated to the concerned Jail Superintendent for information and necessary compliance.