



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

% Date of Decision: 10.10.2025

+ **CRL.A. 734/2024 and CRL.M.(BAIL) 1352/2024**

MR. ZAHID KHAN & ANR.Appellants

Through: Mr. M. Hasibuddin, Advocate with
appellants in person

versus

THE STATE (GNCT OF DELHI)Respondent

Through: Ms.Shubhi Gupta, APP for State
Mr.Arjun Malik, Advocate for complainant

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellants assail the judgment of conviction dated 04.08.2023 and the order on sentence dated 30.07.2024 passed by the learned ASJ (FTC-02), South-East District, Saket Courts, Delhi in SC No. 2530/2016 arising out of FIR No. 33/2016 registered at P.S. Sun Light Colony under Section 307/34 IPC. Both appellants were convicted for the offence punishable under Section 308 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for one year and three months along with a fine of Rs. 30,000/- each, with a default sentence of thirty days' simple imprisonment. The charges for offences under section 307/34 IPC were framed against them on 21.04.2016. The sentence of the appellants was suspended vide order dated 14.08.2024.

2. The prosecution case, briefly stated, is that on 12.01.2016, a quarrel



arose between the complainant *Shahbuddin* and his sons on one side and the appellants, their neighbours, on the other. It was alleged that during the altercation the appellant *Zahid Khan* struck *Shahbuddin* and his son *Asif* with a hammer, causing injuries.

3. The prosecution, in support of its case, examined fifteen witnesses. PW-1 *Shahbuddin*, the complainant, deposed that on 12.01.2016, while he was sitting at his *kabadi* shop at F-128, Kilokari Village, appellant/*Zahid Khan* came and kicked him, leading to a scuffle. He stated that soon thereafter, appellant/*Rahid* arrived and both brothers assaulted him and his son *Asif* with a hammer and fists. He alleged that *Zahid* struck him on the back and later hit his son *Asif* on the head, causing bleeding and loss of consciousness. He was taken to the hospital by neighbors. In his cross-examination, however, PW-1 resiled from his earlier statement, professed ignorance about the assailants' identity, thereby diluting the evidentiary value of his deposition on the aspect of identification. PW-3 *Asif*, the injured eyewitness, substantially corroborated the initial version of PW-1. He deposed that accused *Zahid* first came to their shop, kicked his father, and left, only to return with accused *Rahid*, when both assaulted them. He stated that *Zahid* had a hammer and struck his father on the shoulder and him on the head, rendering him unconscious. His testimony withstood cross-examination, and he identified both accused as well as the hammer (Exhibited as Ex. P-1). The medical evidence—MLC (Ex. PW-7/A) and CT findings (Ex. PW-14/1)—confirmed a fracture of left paramedian frontal bone and anterior wall of right frontal sinus extending to the frontal bone and MLC opined his injury to be grievous in nature. PW-2 *Raja Choudhary*, the welder, stated that someone had snatched a hammer from his shop at the



relevant time, though he could not identify the person. PW-6 Salman did not support the prosecution and was declared hostile. PW-4 Arif, brother of PW-3, proved the photographs of the injured and the seizure memo (Ex. PW-4/A). PW-13 SI Brahma Dutta (Investigating Officer) detailed the investigation, including the recording of the complainant's statement, arrest of both accused, and recovery of the hammer from near F-128 at the instance of Rahid. The remaining witnesses were medical and formal police witnesses, who proved the MLCs, radiology, subsequent medical opinion on the weapon, and discharge summary of Asif. Their testimonies established that Asif sustained a grievous head injury caused by a blunt-force object.

After completion of prosecution evidence, the statements of both accused were recorded under Section 313 Cr.P.C., wherein they denied all incriminating circumstances and claimed false implication. They did not lead any defence evidence.

4. The Trial Court, upon appreciation of the evidence, found that the prosecution had succeeded in proving that both accused, acting in concert, caused injuries to the complainant Shahbuddin and his son Asif. Relying primarily on the testimony of PW-3 Asif, corroborated by the medical and radiological evidence, the Court held that the version of the injured witness was credible and trustworthy despite the hostility of certain witnesses. It observed that while PW-1 Shahbuddin had turned hostile on the aspect of identity, his deposition nonetheless established that an assault had taken place, and his account, read with that of PW-3, supported the prosecution's case as to the occurrence and nature of injuries. The learned Judge concluded that the prosecution had failed to prove any intention to commit murder within the meaning of Section 307 IPC but had clearly established



that the appellants, by inflicting a forceful hammer blow on the head of the injured, possessed the knowledge that such an act was likely to cause death. Accordingly, both appellants were convicted under Section 308 read with Section 34 IPC.

This Court finds no infirmity in the appreciation of evidence by the Trial Court. The conclusion that the appellants committed an offence punishable under Section 308 read with Section 34 IPC is supported by the testimony of the injured witness and corroborative medical evidence. The conviction, therefore, is accordingly affirmed.

5. Learned counsel for the appellants, on instructions from the appellants, who are present in person and have been duly identified by the I.O., seeks their release on probation of good conduct under the Probation of Offenders Act, 1958.

6. The learned APP for the State submits that the appellants have no other involvements.

7. In compliance with the directions of this Court, Social Investigation Reports from the Probation Officer have been placed on record in respect of both appellants. The report concerning appellant/Rahid records that he is 44 years old, educated up to Class IX, and earns his livelihood by operating a small mobile-repair shop, generating an average daily income of about Rs. 500/-. He resides at Kilokari, Jangpura, with his wife, four children and his aged parents. He also is the sole earning member of his household. His wife is a homemaker. The report describes him as a person who is sociable, who maintains cordial relations within his locality. His neighbours and relatives have expressed uniformly favourable opinions about his character, describing him as decent and responsible. The Probation Officer notes that



the appellant has displayed remorse and insight into the consequences of his actions and that the present incident appears to have been an aberration in his life. His family background is stable; his wife and parents have conveyed full confidence in his sense of responsibility and commitment to lawful conduct. Importantly, the report highlights that he has not been involved in any further offences, and enjoys the goodwill of his community. On this basis, the Probation Officer opines that Rahid's continued rehabilitation can be best achieved through supervised probation, rather than further incarceration, and accordingly recommends that he be released on probation of good conduct.

8. The report concerning appellant/Zahid Khan reflects that he is 48 years of age, educated up to Class X, and resides with his wife and daughter at the same family premises in Kilokari. He was found to have suffered a period of ill health and emotional instability in the years following the incident, during which he underwent structured treatment for alcohol dependence at the MANA Foundation (*Nasha Mukti Kendra*). He is stated to be currently undergoing treatment at the aforementioned de-addiction center. The Foundation's Director Mr. Anil, has given a favourable report towards his behaviour. He suffers from illnesses such as Piles and has lost vision from one of his eyes. The report further records that Zahid earns a rental income of about ₹40,000 per month and is unable to support himself and is financially dependent. The Probation Officer has also recorded statements from his neighbours and community members, all of whom describe him as someone with good character and respected. The Probation Officer has concluded that the appellant's conduct over the years since the incident has been satisfactory, that his criminal involvement appears to have been



situational and isolated, and that institutional detention at this stage would serve no rehabilitative purpose. Accordingly, it is recommended that appellant Zahid Khan also be released on probation of good conduct under Section 4 of the Act, subject to regular supervision and counselling.

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. Pertinently, in the present case, Section 308 IPC does not prescribe any mandatory minimum sentence. The punishment under the provision is flexible, extending up to three years, or up to seven years if hurt is caused, or with fine, or with both. It is well settled that the provisions of the Indian Penal Code, which predate the enactment of the Probation Act, must be read harmoniously with the latter statute. The bar to granting probation arises only where a subsequent special enactment (containing a non obstante clause) specifically excludes its operation or mandates a minimum sentence that leaves no room for judicial discretion. In the absence of such restriction under Section 308 IPC, this Court retains full discretion to extend the benefit of probation to the appellants, provided the circumstances of the case justify such relief.

11. The nominal rolls on record dated 23.11.2024 and 02.08.2025, have been perused and they indicate that the appellants remained in judicial custody during investigation and trial, Rahid for about two months and Zahid Khan for approximately four months, and that their overall jail conduct during this period was reported as satisfactory. The records further reflect that there is no other criminal case or proceeding pending against either appellant. Both of the appellants had deposited their fine amounts and the receipts are also placed on record.

12. Having regard to the nature and circumstances of the offence, the time that has since elapsed, and the reconciliatory stance adopted by the parties, this Court is persuaded to take a reformatory view. Since the incident, both appellants have lived in the community without any further transgression and have demonstrated remorse for their conduct. The uniformly positive findings in the Social Investigation Reports, coupled with the appellants'



continued good behaviour, affirm that they are capable of leading responsible lives. This Court also takes note of appellant/Zahid Khan's sustained efforts towards rehabilitation, including his treatment at the MANA Foundation. His willingness to undergo therapy signify genuine reform.

13. Accordingly, while upholding the judgement of conviction and order on sentence of the Trial Court, the 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 probation bonds in the sum of ₹10,000/- each for a period of one year with one surety of the like amount to the satisfaction of the learned Trial Court, to be paid within a period of 4 weeks from today.

14. The appellants shall remain under the supervision of the concerned Probation Officer for a period of one year, 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 appellant shall be liable to undergo the remaining portion of the substantive sentence as awarded by the Trial Court.

15. The appeal and all pending applications stand disposed of in the above terms.

16. Copy of this judgement be communicated to the Trial Court and the concerned Jail Superintendent for necessary information and compliance.

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 10, 2025/kb