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

Reserved on: 14th November, 2025
Date of Decision: 19th November, 2025

+ CRL.A. 629/2003

JINTE @ JITENDER AND ANR.

.....Appellants

Through: Mr. Ravinder Kumar, Advocate
through VC along with Appellant.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP with Mr.
Arsalan Naik, Mr. Sunil Singh
Rawat, Mr. Naresh Kumar Dagar,
Mr. Siddharth Goyal and Mr.
Naveen, Advocates for State.
SI Vishvendra Singh, P.S. Mayur
Vihar.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

1. By way of the present appeal, the appellants seek to assail the judgment dated 22nd August, 2003 and the Order-on-Sentence dated 23rd August, 2003, passed by the trial court arising out of the FIR bearing No. 142/2001 registered at Police Station- Mayur Vihar, Delhi.
2. *Vide* the impugned judgement, the appellants were held guilty for committing the offence punishable under Section 308/34 of the Indian Penal Code (hereinafter "IPC") and *vide* the impugned order on sentence, the appellants were sentenced to undergo Rigorous Imprisonment for a period of 3 years each along with a fine of ₹2000/- each and in default of payment of fine to further undergo Rigorous Imprisonment for a period of 4 months each.



3. The appellants were charged under Section 308/34 IPC on the allegations that on 10th June, 2001, at about 11:00 pm, at road block no. 25, Rajeshwar Dham Mandir, Trilokpuri, Delhi, both the appellants along with their father namely Anekpall (since expired) in furtherance of their common intention caused injuries on the person of Vijay Gupta with dandas and sarias with such intention or knowledge and under such circumstances that if they by that act caused the death of the injured, they would have been guilty of culpable homicide not amounting to murder. To the said charge, the appellants pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case has examined 13 witnesses. The statements of the appellants were recorded under Section 313 CrPC, wherein the appellants had denied incriminating evidences and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellants. The appeal qua the appellant no. 2 namely Vijay has been abated vide order dated 3rd May, 2024.

5. Learned Counsel for the appellant no. 1 namely Jinte @ Jitender has submitted, on instructions, that the appellant no. 1 is remorseful and, being fully aware of the consequences, does not wish to press the present appeal on merits and is limiting his appeal for the modification of the order on sentence for release of the appellant no. 1 on probation. Accordingly, it is prayed that the benefit of Section 4 of the Probation of Offenders Act be extended to him.

On the other hand, learned APP for the State has argued that the trial court has passed the order on sentence after considering the material on record and there is no infirmity in the said order on sentence.



6. I have heard the learned Counsel for the appellant and learned APP for the State and have examined the record.

7. PW-5 Vijay Gupta is the injured and is the material witness of the case. PW-5 has supported the cases of the prosecution. The testimony of PW-5 as to the injuries suffered by him in the said assault is also corroborated by his MLC Ex. PW3/A. The injuries have been opined as grievous by blunt object and that opinion is Ex. PW3/B. The testimony of PW-5 is also corroborated by PW-6 Shri Ami Chand who is the father of PW-5 and is the eye-witness to the incident.

8. Since the appellant no. 1 has chosen not to press the present appeal on merits with respect to his conviction, this Court has not interfered with the findings of the conviction recorded by the trial court and accordingly, the impugned judgment is upheld.

9. Pursuant to the directions of this Court, a Social Investigation Report dated 22nd May, 2024 has been placed on record. As per that report, the appellant no. 1 is aged 50 years and has a wife and two sons and lives in Delhi for the past 22 years. He is working as a security guard. The behaviour of the appellant no.1 with his family members and with neighbours is peaceful and cordial. No past criminal record has been found against the him. The appellant no. 1 has suffered socially, mentally, economically throughout the period of trial and there are good chances of his reformation. The appellant no. 1 has all the responsibilities of his family.

10. A perusal of the nominal roll shows that the appellant no. 1 has already undergone sentence of 28 days. Fine has already been deposited by him. The present case relates to an incident which has occurred 24 years ago while the impugned judgment itself was delivered nearly 22 years ago. The



appellant no. 1 would suffer undue hardship if incarcerated at this stage.

11. The object of the Probation of Offenders Act has been emphasized by the Hon'ble Supreme Court in Lakhvir Singh etc. vs. State of Punjab, (2021) SCC OnLine SC 25 as follows:

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

Also, the Hon'ble Supreme Court, in *Chellammal & Anr. v. State represented by the Inspector of Police*, 2025 SCC OnLine SC 870, has reiterated the legal position with respect to grant of probation. The relevant observations are as under:

“28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to



record the reasons therefor.”

12. The power to grant probation has to be exercised after keeping in mind the character of the offender, the nature of the offence and the overall circumstances of the case. The main object to grant probation to the offenders is to facilitate their reintegration into the society and aiding in their reformation.

13. After considering the above discussed mitigating facts and circumstances, Social Investigation Report and the law laid down by the Hon'ble Supreme Court, this Court is of the opinion that this is a fit case for the release of the appellant no. 1 on probation. Accordingly, while maintaining the conviction of the appellant no. 1, the substantive sentence awarded vide order dated 23rd August, 2003 is modified to the extent that the appellant no. 1 is directed to be released on probation of good conduct on his furnishing a bond in the sum of Rs. 10,000/- with surety in the like amount to the satisfaction of the concerned trial court to be filed within two weeks from today, for a period of one year and to appear and receive sentence when called upon during the said period and in the meantime to keep peace and be of good behaviour. However, the sentence of fine is maintained.

14. Accordingly, the appeal is partly allowed in the above terms. All pending application(s), if any, also stand disposed of.

15. A copy of this judgment be communicated forthwith to the concerned trial court and the jail superintendent for information and necessary compliance.

**RAJNEESH KUMAR GUPTA
(JUDGE)**

NOVEMBER 19, 2025/tp