

IN THE COURT OF SH SANJAY SHARMA-I  
PRINCIPAL DISTRICT & SESSIONS JUDGE,  
NORTH EAST, KARKARDOOMA COURTS, DELHI

1. Crl. Appeal 57/2024  
CNR No. DLNE01-001057-2024

Sh. Shiv Sunder  
S/o Late Sh. Sewak Ram,  
R/o House No. F-47, Street No.3,  
Pushta Road, West Karawal Nagar,  
North East District,  
Delhi-110094.

...Appellant

*VERSUS*

The State

...Respondent

*Date of Institution* : 16.04.2024  
*Date of hearing arguments* : 26.02.2026  
*Date of Decision* : 17.03.2026

*AND*

2. Crl. Appeal 60/2024  
CNR No. DLNE01-001056-2024

Sh. Kishan  
S/o Sh. Ratan Singh,  
R/o House No. F-75, Street No.1,  
Pushta Road, West Karawal Nagar,  
Dayalpur, North East District,  
Delhi-110094.

...Appellant

*VERSUS*

The State

...Respondent

*Date of Institution* : 16.04.2024  
*Date of hearing arguments* : 26.02.2026  
*Date of Decision* : 17.03.2026

*AND*

3. Crl. Appeal 63/2024  
CNR No. DLNE01-001078-2024

Sh. Anoop Rawat  
S/o Sh. Ram Dutt Rawat,  
R/o House No. E-95, Main 20 Futa Road,  
Karawal Nagar, North East District,  
Delhi-110094. ...Appellant

*VERSUS*

The State ...Respondent

*Date of Institution* : 18.04.2024  
*Date of hearing arguments* : 26.02.2026  
*Date of Decision* : 17.03.2026

*AND*

4. Crl. Appeal 66/2024  
CNR No. DLNE01-001105-2024

Sh. Chetan  
S/o Sh. Ratan Singh  
R/o House No. 75, Street No. 1  
Block F, West Karawal Nagar,  
North East District,  
Delhi-110094. ...Appellant

*VERSUS*

The State ...Respondent

*Date of Institution* : 19.04.2024  
*Date of hearing arguments* : 26.02.2026  
*Date of Decision* : 17.03.2026

## **JUDGMENT**

These are four appeals bearing CrI. Appeal No. 57/2024, CrI. Appeal No. 60/2024, CrI. Appeal No. 63/2024 and CrI. Appeal No. 66/2024, arising out of the same impugned judgment dated 31.07.2023 and order on sentence dated 20.03.2024, passed in case FIR No. 301/2009, PS Khajuri Khas, u/s 354/323/352/34 IPC titled as State vs. Kishan & Ors. Since all the four appellants were convicted by the same impugned order, hence, all the four appeals are being decided together, though each convict has preferred a separate appeal. It is also worth mentioning that the grounds taken by all the four appellants are almost identical.

2. Appellants have filed the present criminal appeal u/s 374 Cr.P.C. against impugned judgment dated 31.07.2023 and impugned order on sentence dated 20.03.2024, passed by Ms. Renu Chaudhary, the then Ld. JMFC (Mahila Court)-02, North East District, Karkardooma Courts, Delhi in FIR No. 301/2009, PS Khajuri Khas, U/s 354/323/452/34 IPC titled as State vs. Kishan & Ors., whereby appellant/accused Kishan was acquitted of offence u/s 354 IPC and all the accused persons/appellants namely Kishan, Chetan, Anoop Rawat and Shiv Sunder were convicted for offences u/s 323/452/34 IPC and were sentenced to

undergo simple imprisonment for a period of six months and to pay fine of Rs.10,000/- each (total Rs.40,000/-) for commission of offence u/s 452 IPC and in default of payment of fine, convicts were directed to undergo Simple Imprisonment for one month each. Convicts were further sentenced to undergo Simple Imprisonment for a period of two months and to pay fine of Rs.1,000/- each (total Rs.4,000/-) for commission of offence u/s 323 IPC and in default of payment of fine, convicts were directed to further undergo Simple Imprisonment for 10 days.

3. Notice of appeal was issued and accepted by the Ld. Chief P.P. for the State.

4. Facts leading to filing of present appeal are that on 19.10.2009, at about 6.45 p.m., when the complainant was going to a temple near her house with her mother, appellant Kishan caught hold of her hand and touched her cheek upon which complainant raised alarm. Mother of complainant, who was just behind her at some distance reached there and accused Kishan slapped complainant's mother. The sister of complainant was present at the roof of her house from where she saw the incident and informed her father and brother, who reached at the spot and objected to the conduct of accused. Appellants, who were already present there, started beating complainant's parents and brother and they somehow managed to escape and reached their house. After that Appellants followed them and entered into the house of complainant. Appellants were armed with weapons i.e. sword, iron rod, wooden stick and *fawda* and they all started beating the

complainant and her family. Upon raising alarm, accused persons fled away from the spot. Consequently, the case was registered and after completion of investigation, charge-sheet was filed under Section 354/323/452/34 IPC against appellants Kishan, Anoop Rawat, Shiv Sunder and Chetan. Cognizance was taken by the Court and accused persons were summoned. On their appearance, copies were supplied in compliance of Section 207 Cr.P.C. After hearing arguments, charge u/s 452/323/34 IPC was framed against all the accused persons and in addition to that, notice u/s 354 IPC was also served upon accused Kishan on 09.10.2013. Thereafter, matter was listed for PE and Prosecution had examined 11 witnesses. MLC of victim Murarilal prepared by Dr. Rajan Kumar was admitted by accused persons as Ex.C-1. Thereafter, PE was closed and accused persons were examined u/s 313 Cr.P.C. Accused opted not to lead DE and matter was listed for final arguments. After hearing final arguments, Ld. Trial Court had passed the impugned judgment dated 31.07.2023 and order on sentence dated 20.3.2024. Being aggrieved with the impugned judgment and order on sentence, the appellants/convicts have preferred the present appeal.

5. I have heard Sh. RC Verma, Ld. Counsel for appellant Chetan, Sh. Rajeev Kumar, Ld. Counsel for appellant Anoop Rawat, Sh. Rajan Sharma, Ld. Counsel for appellant Shiv Sunder and Sh. DK Singh, Ld. Counsel for appellant Kishan and have also considered the submissions of Sh. Sachin Adhikari, Ld.

Counsel for the complainant/victim. I have also perused the Trial Court record.

6. It was a common argument on behalf of all the appellants that the Ld. Trial Court had passed the impugned order while relying only on the testimony of the injured eye witnesses who all happen to be family members, without considering that no public witness was either cited or examined by the prosecution, though there was high probability of public witnesses being present at the spot as the area where the incident took place, is a residential area and is densely populated.

7. PW1 and PW3, both in their cross examination deposed that no public person gathered or was available at the time of the first incident when the accused had misbehaved with PW1. It was further deposed by PW1 that since she was outside the temple, she could not say if the priest was inside the temple at the time of the said incident of misbehavior. Similarly, PW3 also deposed in the cross examination that no one from the temple came to the spot on hearing their noise. Similarly, PW4 another eye witness to the said incident and brother of the victim also deposed in the cross examination that he had not seen any public person at the spot at that time. Likewise, PW6 the mother of the victim, also deposed in her cross examination that no public person was present at the time of the incident in the temple. Thus, when there was no public person present, which is clear from the testimony of all the said four witnesses who deposed this fact in harmony, there was no question of examining any such witness.

8. The second part of the incident took place inside the house of the complainant as per the case of the prosecution. In such a scenario the presence of public witness is not otherwise possible. However, PW1 in the cross examination, deposed that her neighbour '*Pyaaaz wale uncle*' did not come to her house when the accused attacked at her house. Similarly, PW2 also deposed in her cross examination that though they raised alarm when the accused attacked in their house, but none came from the neighbor to save them including the said '*Pyaaaz wala*' or from other houses in the gali, though they were seeing the incident. PW3 also deposed in the cross examination that no one from the locality came inside his house to save them from the accused and was unaware if people of the locality gathered outside his house on hearing his shouts. He further deposed that he had not come out of the house till the police arrived and even then, no person of the locality was present outside his house. PW4 deposed in the cross examination that they had not raised any alarm when the accused were beating them, but further deposed that no neighbor came to save them. PW6 also likewise deposed that no public person gathered around his house during the incident.

9. Thus, all the witnesses have again in complete harmony, deposed same fact that no public person, including any neighbor, had gathered inside or outside their house at the time of the main incident. When the defense has failed to even remotely show from the cross examination of any of the witness about the

presence of any public witness at the time of either incident, the argument that the public witnesses were though available but not examined, is totally devoid of merits.

10. Even otherwise, it is a settled law that in case the testimony of the material witnesses is trustworthy and reliable, non-examination of any public witness is not fatal to the prosecution case. In **Baljinder Singh and Ors. Vs. State of Punjab Criminal Appeal No. 1389 of 2012 Decided On 25.09.202 MANU/SC/1063/2024**, it was held as under:

*“It is also settled law that examination of independent witness is not an indispensable requisite if the testimonies of other witnesses are deemed trustworthy and reliable. Non-examination of any independent witness by the prosecution will not go to the root of the matter affecting the decision of the court, unless other witnesses' testimonies and evidences are scant to establish the guilt of the Accused. Reference is made to paragraph 24 of the decision of this Court in Guru Dutt Pathak v. State of U.P. MANU/SC/0342/2021: 2021: INSC:285: (2021) 6 SCC 116, where it was ruled as follows:*

*24. One another ground given by the learned trial court while acquitting the Accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere non- examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.*

*24.1. In Manjit Singh v. State of Punjab MANU/SC/1195/2019 : 2019:INSC:992 : (2019) 8 SCC 529, it is observed and held by this Court that reliable evidence of injured eyewitnesses cannot be discarded merely for reason that no independent witness was examined.*

*24.2. In the recent decision in Surinder Kumar v. State of Punjab MANU/SC/0001/2020 : 2020:INSC:1 : (2020) 2 SCC 563, it is observed and held by this Court that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the Accused was falsely implicated.*

*24.3. In Rizwan Khan v. State of Chhattisgarh MANU/SC/0680/2020 : 2020:INSC:543 : (2020) 9 SCC 627, after referring to the decision of this Court in State of H.P. v. Pardeep Kumar MANU/SC/0213/2018 : 2018:INSC:166 : (2018) 13 SCC 808, it is observed and held by this Court that the examination of the independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case.*

Thus, this argument of the appellant regarding non-examination of public/independent witness is of no consequence.

11. It was next argued that the complainant and her family wanted to occupy and encroach Durga Mandir situated at West Karawal Nagar to which appellant had raised objection and as such, they have been falsely implicated in this case. This was the defence raised by the appellants during the cross examination of the witnesses by putting suggestions to them but which was denied by all the witnesses and the appellants failed to lead any evidence to prove the said defence. Hence, this argument is also not acceptable.

12. It was further argued that the investigation of the case was biased since appellants Kishan and Anoop were apprehended on the very next day of the registration of the FIR, but the addresses of other accused Shiv Sunder and Chetan were

not disclosed on the day of registration of the FIR or the arrest of the other two accused. As per the chargesheet, appellant Kishan and Chetan are real brothers and stated to be residing at the same address. So the address of Chetan was available. The appellant Shiv Sunder was residing at a different address. It is not necessary that complainant would have been knowing the addresses of all the accused at the time of incident. Even otherwise, it was never questioned from any of the witnesses if they were aware about the addresses of each and every accused and now they cannot take benefit of this omission.

13. It was also argued that all the main witnesses deposed that none of the accused was armed with weapon at the time of first incident near temple and they had not called the PCR after the said incident. Further that the witnesses have differently deposed the time when they reached their house after the first incident, the difference of time when the accused entered their house or whether the injuries were inflicted inside the house or in the gali. It is worth mentioning that the first incident was of misbehaviour and manhandling and generally such minor incidents are not reported to the police by ordinary laymen. However, there is only a slight difference regarding the timing as deposed by all the four witnesses as to when they reached back home and when the accused attacked at their house. No question in this respect was asked from PW1. PW2 was not present at the temple. PW3 deposed that he had taken his wife and daughter to his house and within 5-7 minutes of his reaching there, the

accused attacked their house within 5 minutes of their arriving at the house. PW4 deposed that the accused entered their house after about 4-5 minutes of their arrival after the first incident. Similarly, PW6 deposed that she reached back home after the first incident within 4-5 minutes thereafter and the accused followed to their house and were just behind them.

14. It can be appreciated from the cross examination of these witnesses that firstly there is no difference regarding the timings as submitted by Ld counsel for the appellant and even if there are minor inconsistencies in the testimony of material witnesses, they are not fatal to the prosecution case nor can be such as to discredit the testimony of all these witnesses. The law relating to material contradiction in witness testimony has been discussed in the judgment of *Rammi vs State of MP 1999 8 SCC 649* wherein It has been held as under: -

*“25. It is common practice in trial court to make out contradictions from the previous statements. Merely Because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No Doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. Only such of the inconsistent statement which is capable to be “contradicted” would affect the credit of the witness”*

15. The Ld. Counsel for appellant pointed out that as per the deposition of the complainant, she had not stopped the appellants beating her family members and was standing away

and her sister was holding her child in her arms. It was submitted that it is unlikely that the complainant or her sister never intervened to save their family members or called the PCR, which show that the incident has been planted. This fact has already been duly explained by the complainant in her cross examination when she deposed that *‘when the accused persons were beating my brother and parents, I did not go to rescue them as I was scared and my sister could not go to save them as she was holding her son’*.

16. The complainant was about 15 years of age at the time of the alleged incident and it can be well understood that a girl of such tender age would have got scared in such a scenario. Her elder sister PW2 also gave similar explanation submitting that she was holding her six-month old child in her lap and the complainant had got scared. Thus, there is nothing unnatural in the conduct of either of the witnesses which would make out the incident to be false or planted. This also explains the other submission that the complainant and her sister PW2 did not visit the hospital to see her parents and brother or that PW6 went to the hospital in the late evening on her own.

17. It was next pointed out that PW2 deposed that when her brother and father rushed towards the temple at the time of first incident, she was standing at the main door of the house and thereafter, she saw the four accused coming towards the side of their gali and beating her father, mother and brother and were armed with danda, fawda, sword and iron pipe. She further

deposed that they all managed to enter the house and her brother made a call to PCR but suddenly all four accused armed with the said weapons entered their house and started beating her mother, father and brother.

18. On the other hand, PW4 deposed that they had not made any call to the police from the spot i.e. temple and called the PCR while the accused were beating them inside their house. It is to be noted that PW3 also deposed that his son had made a call to the PCR after the accused ran away. PW1 and PW6 also deposed that the call was made by PW4 Jitender after the accused fled away. Thus, there is only a minor contradiction regarding this fact appearing in the testimony of PW2 and PW4 about the time of making the call to the PCR, but all the witnesses are consistent regarding the fact that the said call was made by PW4. As already observed above, such minor contradictions are not material and are not sufficient to efface the testimony of otherwise consistent witnesses.

19. It was further submitted that witnesses have not disclosed the time of their reaching the hospital nor disclosed the name of the assailants to the doctor. It was never asked from the witnesses in the cross examination. However, the date and time of their medical examination is mentioned as 19.10.2009 at 09.00 PM. Since the doctor never asked the name of the assailants, obviously their names were never told to him.

20. Ld. Counsel also submitted that all the witnesses deposed the time of incident as about 06.45 PM but the IO

deposed that he reached the spot at about 05.55 PM and this is a material contradiction. The time of incident in the tehrir Ex.PW1/A is also mentioned as 06.45 PM. The FIR also mentions the time of incident as 06.45 PM. The copy of DD No. 21A regarding the incident is not on the record nor was ever questioned during the cross examination of PW10/IO and therefore, it appears to be only a minor omission in the testimony of the IO regarding the time when he reached the spot. Considering the consistent testimony of all the other witnesses regarding the time of incident, this minor contradiction can easily be brushed aside in view of the judgment in **Rammi's case** (*supra*).

21. It was further contended that no weapon of offence except a *fawda* was recovered and the same was also not containing any blood stains and it was also not sent to FSL which creates doubt in the prosecution story. Firstly, the injuries were opined to be simple which were generally bruises and abrasions except a lacerated wound over right parietal region above ear on the person of PW3 Murari Lal. Hence, it is highly unlikely that the weapon of offence could have got any blood stains. PW8 Dr. Devender Kumar deposed that he was unable to give any opinion if injuries suffered by the injured could have been inflicted with a sword or spade (*fawda*). The injuries as mentioned were simple abrasions and bruises therefore, such opinion could not have been given. Even otherwise, the appellants have been held guilty for the offence under Section 323 IPC and in order to return a

finding of guilt for the said offence, even the medical report is not required to be proved. Reference can be made to the judgment in *Lakshman Singh vs State Of Bihar dated 23 July, 2021 (AIR 2021 SUPREME COURT 3552)* wherein it was held as under: -

*“However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. “Hurt” is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause “hurt”. Therefore, even causing bodily pain can be said to be causing “hurt”. Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC.”*

Hence, this leg or argument also does not favour the appellants.

22. Lastly, it was submitted that all the appellants are first time offenders and therefore, they be granted benefit of Section 4 of the Probation of Offenders Act. Reliance was placed by the Ld. Counsel on the judgment in *Rajjan Vs State of UP dated 02.01.2020, Hargovind and Ors. Vs State of UP dated 11.01.2019 and Arvind Kumar Dixit @ Pappu Vs. State of UP dated 24.08.2024.*

23. It is a matter of record that the incident took place on 19.10.2009 and already more than 16 years have passed. The appellants who were in the age group of 20-23 years at the time

of incident are now in the age group of 36-39 years. Admittedly, the prosecution has failed to bring on record any past criminal involvement of any of the appellant and even as per the report of the Probation Officer called by the Ld. Predecessor in respect of all the appellants, it has been reported that they appear to originate from a stable family environment. They are well settled in the society and in their family and have deep remorse and regret over the incident which took place under unforeseen circumstances.

24. I have also considered the judgment cited by the Ld. Counsel for the appellants in *State of Maharashtra Vs. Jagmohan Singh, Kuldeep Singh Anand & Ors. AIR 204 SC 4412 and Ved Prakash vs State of Haryana AIR 1981 SC 643* wherein in similar circumstances the convicts were released on probation.

25. Considering the totality of the circumstances and the appreciation of the evidence which come on the record of the Ld. Trial Court, the conviction of all the appellants is maintained and it is held that they have been rightly held guilty for the offences punishable under Section 452/323/34 IPC. The impugned order of conviction dated 31.07.2023 is therefore, upheld.

26. However, considering the fact that the appellants are first time offenders and no incident against them has been reported after the incident for which they have been convicted and also the fact that 16 years have passed and much water has flown since the date of incident which took place on a trivial issue, this court is not inclined to award them the substantive

sentence of imprisonment. No purpose would be served in confining the appellants in custody for a duration of six months.

27. Accordingly, the substantive sentence of imprisonment of Simple Imprisonment for six months under Section 452 IPC and Simple Imprisonment for one month under Section 323 IPC is hereby set aside and all the appellants are directed to be released on probation of good conduct for a period of two years from the date of this order during which they shall maintain peace and good behaviour, on their furnishing a personal bond in the sum of Rs.10,000/- with one surety in the like amount each. However, the order regarding payment of fine and compensation to the victims, in terms of the order of sentence dated 20.03.2024, shall remain undisturbed.

The appeal is disposed of in terms of the above order.

Appeal File be consigned to Record Room and copy of this order along with TCR be sent to the Ld. Trial Court for recovery of fine and awarding of compensation. A copy of this order be kept on the record of each of the appeal.

***Announced in the open court  
today on 17<sup>th</sup> March, 2026***

**(SANJAY SHARMA-I)  
Principal District & Sessions Judge  
North East, Karkardooma Courts, Delhi**