

IN THE COURT OF MS. SHEFALI BARNALA TANDON,
ADDITIONAL SESSIONS JUDGE-06,
NEW DELHI DISTRICT, PATIALA HOUSE COURT,
NEW DELHI



Criminal Appeal No. 267/2024
CNR NO. DLWT01-009238/2024

In the matter of :

Rohtash
S/o Sh. Athe Singh
R/o H. No. 6, DDA Flats,
New Delhi.

.... Appellant

Versus

State
(Through Public Prosecutor)

.... Respondent

AND



Criminal Appeal No. 268/2024
CNR NO. DLWT01-009237/2024

In the matter of :

Deepak
S/o Sh. Dharmani
R/o H. No. 69A, Arjun Nagar,
Safdarjung Enclave, New Delhi.

.... Appellant

Versus

State
(Through Public Prosecutor)

.... Respondent

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Criminal Appeal No. 268/2024

Deepak Vs. State

Date of Institution	: 16.11.2024
Date of reserving order	: 16.04.2026
Date of pronouncement	: 28.04.2026

J U D G M E N T

1. Since, the both appeals are arising out of same orders/judgments, this Court shall dispose of both appeals by this common judgment.

2. The present appeals have been preferred by the appellant under Section 374(3) Cr. PC assailing the judgment dated 28.05.2024 and order on sentence dated 15.10.2024 (herein after referred to as the '*Impugned Orders*') passed by Ld. JMFC-05, Patiala House Court, New Delhi (herein after referred to as the '**Ld. Trial Court**') in case FIR No. 262/2008 under Section 325/323/506/34 IPC registered at Police Station – Sarojini Nagar whereby Ld. Trial Court vide *Impugned Orders* convicted the appellant(s) for the offence under Section 323/325 read with Section 34 IPC. and sentenced them to undergo simple imprisonment for **three months** for the offence punishable under Section 323 IPC and simple imprisonment for a period of **one year** along with fine of **Rs.10,000/- each** for the offence punishable under Section 325 IPC. They were also directed to pay fine of Rs.50,000/- i.e. Rs.25,000/- each to victim Sanjay for his loss/injuries incurred by him. In the event of failure to payment of fine amount, the appellant(s)/convicts shall further undergo simple imprisonment for a period of 15 days and both the imprisonment shall run concurrently.

Brief facts

3. The brief facts as noticed by Ld. Trial Court are as under :

“Briefly stated, the case of the prosecution is that on the night of 22.06.2008 at DDA Flats, Safdarjung Enclave, New Delhi, the accused persons stopped the brother of the complainant namely Yogesh and gave beatings to him with belt, fists and blows and caused injuries to him because of which he was admitted in the hospital and when the complainant Sanjay was returning from the hospital after getting his brother admitted, the accused persons also gave beatings to him due to which he received grievous injuries. When one Ashu tried to rescue the complainant, the accused persons gave beatings to Ashu also, due to which he sustained simple injuries. A complaint was made regarding the incident as such, it is alleged that the accused persons have committed the offence punishable under section 323,325,506 r/w section 34 of the Indian Penal Code, 1860 (hereinafter, "IPC"), for which FIR no. 262/2008 of year 2008 was registered at the police station Sarojini Nagar, New Delhi.”

4. Ld. Trial Court after hearing the arguments and perusing record, framed charge under Section 325/34 IPC and additional charge under Section 323/34 against both the accused persons to which they pleaded not guilty and he was made to face trial.

5. To bring home the guilt of the accused, prosecution has examined as many as ten witnesses. Thereafter, Ld. Trial Court recorded the statement of both accused persons under Section 281

read with Section 313 Cr.P.C. wherein, they denied all the incriminating circumstances put to him and reiterated their innocence. Though both accused persons chose not to lead defence evidence.

6. Upon appreciation of the evidence available on record, the Learned Trial Court convicted the appellant/accused for the offence under Section 323/325/34 IPC and sentenced them as mentioned in preceding paragraphs.

Arguments addressed on behalf of appellant

7. Assailing the impugned order, Ld. Counsel for the appellant submitted that the impugned order is based on conjectures and surmises, against the settled law and without property appreciation of the evidence and material available on record; that the Ld. Trial Court failed to consider that the prosecution has miserably failed to prove all the ingredients of the offence i.e. the *mens rea*, *actus reus* and the link of causation between the crime and the accused; that Ld. Trial Court did not appreciate the arguments raised on behalf of accused persons; that Ld. Trial Court failed to consider that there was an inordinate delay in reporting the matter to the police, which creates great suspicion on the story set up by the prosecution; that Ld. Trial Court failed to consider that there are material contradictions in the testimonies of material prosecution witnesses.

Arguments addressed on behalf of State/Respondent

8. Per contra, Ld. Counsel for respondent supporting the *Impugned Order* argued that there is no infirmity and illegality done

by the Ld. Trial Court and has rightly convicted and sentenced the appellant(s) as the prosecution witnesses duly supported the case of the prosecution, hence *impugned* order passed by the Ld. Trial Court does not warrant any interference by this Court.

Analysis of material witnesses

9. The Court heard the arguments as advanced by Ld. Counsels for both the parties and have gone through the material available on record including Trial Court Record.

10. To bring home the guilt of the appellant/convict, the prosecution has examined 10 prosecution witnesses i.e. Sh. Yogesh Jha (***Injured***) as PW-1; Sh. Ashu Arora (***Injured***) as PW-2; Dr. Navajyoti Barman (**Doctor proved the MLC of injured Yogesh**) as PW-3; Sh. Narender Pal Singh (**Doctor proved the MLC of injured Ashu**) as PW-4; HC Narender Singh (**Duty Officer**) as PW-5; Retired ASI Daya Chand (**Investigating Officer**) as PW-6; Sh. Sanjay Jha (**Complainant**) as PW-7; Dr. Khari Anil (**Doctor examined injured Sanjay**) as PW-8; that Inspector Sanjeev Mandal (**Witness of investigation**) and Sh. Islam Ahmad (**Proved MLC of injured Sanjay**) as PW-10.

11. FIR in the instant case was registered on the complaint of complainant Sh. Sanjay Jha, who stepped into witness box as PW-7 and deposed that in the evening of 22.06.2008, when he was returning from his office, he saw that Rohtash, Deepak and some other persons were beating his younger brother Yogesh and due to said beatings he sustained injuries. He further deposed that he took his brother Yogesh

to hospital for treatment and after admission of his brother, which he was returning his house and had reached near DDA Flats in front of Ram Mandir, accused Rohtas, Deepak and others stopped him and accused Rohtas told his associates that “ISE JAN SE MAR DO NHI TOH YE COURT ME GAVAH DEGA”, thereafter, said persons including accused Rohtas and Deepak starting beating him with kicks and fist blows and due to said beatings, he became unconscious and got fracture in his mouth and remained in hospital for about 20-22 days.

12. During cross examination, PW-7 stated that he was attacked by accused persons along with 4-5 other persons. He denied the suggestion that he had also filed another case qua accused Rohtas hence, he had alleged his name in the present matter. He also denied that no quarrel had taken place between him and the accused Rohtash.

13. Injured Sh. Yogesh was examined as PW-1 and deposed that he knew accused Rohtash and on 22.06.2008, when he was going to his office at Humayunpur and reached at DDA Flats, Safdarjung Enclave, he noticed that accused Rohtash and his associates were standing near the vehicle, accused Rohtash shook hands with him and kept other hand on his shoulder and held his hand tightly and when he asked “*BHAI SAAB KYA BAAT HO GAYI?*”, accused Rohtash replied “*DARU PEEKE BAHUT BOLTA HAI, OFFICE CHAL ABHI BATATA HUN*”. When he refused, accused Rohtash said “TU TO JAEGA TERE ACCHE ACCHE BHI JAENGE” and accused Rohtash called his associate Maddy, who came there with accused Deepak and on the directions of accused Rohtash, accused Maddy gave him belt

beatings and thereafter all accused persons started beating him with fist and leg blows. He became unconscious and accused persons took him in front of their office. He made PCR Call and also called his brother Sanjay through telephone, who came there along with his 2-3 friends.

14. During cross examination, PW-1 denied the suggestion that the alleged scuffle did not happened with the accused persons.

15. Another injured Sh. Ashu Arora was examined as PW-2 and deposed that in the intervening night of 22/23.06.2008, when he was coming towards DDA Flats, Safdarjung Enclave from his house and reached at DDA Flats, he saw gathering of many people along with accused Rohtas and Deepak. He noticed his known Sanjay in unconscious condition and when he tried to help him, accused persons gave him beatings to him and dragged him upto the PCR vehicle which was parked near the spot and thereafter, he was shifted to hospital by PCR officials.

16. Hon'ble High Court of Delhi in ***Crl. A. No. 1246/2021*** titled as ***Mukesh Singh Vs. State (NCT of Delhi)***, has observed that :

'17. The testimony of an injured eye witness must be placed at a higher pedestal, as such witness is not only an eye witness of the crime but he himself is a victim of crime and therefore, he is expected to give a truthful version of the entire scene of crime and also with regard to the description of the persons who are the perpetrators of the crime. The witness who himself receives injuries of serious nature during assault would not normally let go the real culprits until and unless the

defence succeeds to establish that there was a strong motive on the part of such a witness to save the real culprits and falsely implicate the innocent persons. It is also a settled legal position that minor omissions, discrepancies or improvements in the testimony of an eye witness cannot discredit his testimony unless the same militates against the core or heart of the prosecution case.”

17. Accordingly, law is well settled that the evidence of an injured witness is considered to be on a higher pedestal than that of a witness simpliciter and that the Court has to strike a balance between the testimony of the injured witness and that of an interested. His statement is generally considered to be very reliable as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law and the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein.

18. In the instant case, prosecution has examined all three injured persons being PW-1, PW-2 and PW-7, their testimonies cannot be discarded, as their presence at the spot cannot be doubted, particularly, in view of the fact that immediately after PCR calls were made and proved on record as **Ex.PW6/A, Ex.PW6/B, Ex.PW6/C, Ex.PW6/D and Ex.PW6/E**, the injured witness had been medically examined without any loss of time on the same day vide their MLCs

proved on record as **Ex.PW3/A (Injured Yogesh)**, **Ex.PW4/A (Injured Ashu)** and **Ex.PW10/A (Injured Sanjay)**. The injured witnesses had been put through cross-examination but nothing can be elicited to discredit their testimonies.

Conclusion

19. In view of the above discussion, this Court finds no cogent reason to interfere with the impugned judgment dated 28.05.2024. Accordingly, both appellants/convicts are held guilty for the offences punishable under Section 323/34 and Section 325/34 IPC.

20. As far as impugned order qua order on sentence is concerned, Ld. Counsel for the appellant(s)/convicts prays for their release on probation being first time offender and submitted that VIR has already been filed before the Ld. Trial Court and the same be considered. Heard.

21. Before passing order impugned order qua on the point of sentence, this Court deems it appropriate to hear the complainant/injured. Accordingly, issue notice to complainant/injured for 12.05.2026.

22. Put up for appearance of complainant/injured and further orders on 12.05.2026.

**Pronounced in the open
Court on 28.04.2026**

**(Shefali Barnala Tandon)
Additional Sessions Judge -06,
Patiala House Court, New Delhi**