

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal (Sb) No. 398/2025

Vikas Kumar S/o Manfool Ram, Aged About 35 Years, Sardarpura
Bika, P.s. Sadar Suratgarh Distt. Sri Ganganagar.

----Appellant

Versus

State Of Rajasthan, Through Pp

----Respondent

For Appellant(s) : Mr. D.L. Rawla

For Respondent(s) : Mr. S.S. Rathore, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

JUDGMENT

16/07/2025

1. This criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred by the appellant, Vikas Kumar, challenging the judgment dated 09.12.2024 passed by the learned Additional Sessions Judge No. 2, Hanumangarh. By the said judgment, the appellant was convicted for offences under Sections 323 and 325 of the Indian Penal Code, 1860 (IPC) and was released on probation under Section 4 of the Probation of Offenders Act, 1958, subject to the deposit of compensation under Section 5 of the said Act.

2. The brief facts of the prosecution case are that on 22.07.2016, PW-2 Umashankar lodged a written complaint at Police Station Pilibanga, alleging that on the night of 21.07.2016, at around 10:50 PM, while he was in a rented shop along with Shiv Kumar, Raj Kumar, and Sonu Chalana, five individuals forcefully entered and attacked them with sticks and bats. Among

the intruders, the appellant **Vikas Bishnoi** was identified. The assailants allegedly inflicted grievous injuries and looted various items including cash, ornaments, a laptop, and mobile phones.

On the basis of this report, FIR No. 379/2016 was registered, and after due investigation, a charge sheet was filed against the appellant and four others for offences under Sections 148, 458/149, 459/149, 395, 397, 323/149, and 325/149 IPC.

2.1. After investigation, charges were framed, the prosecution examined 11 witnesses and submitted 39 documents. The defence produced two documents. Upon comprehensive appreciation of evidence, the learned Trial Court acquitted co-accused Kapil, Kamlesh Kumar, Mukesh Kumar, and Rajesh Kumar of all charges and also acquitted the appellant of the more serious charges under Sections 148, 458/149, 459/149, 395, and 397 IPC. However, the appellant was convicted under Sections 323 and 325 IPC for voluntarily causing hurt and grievous hurt. Taking a lenient view, the Trial Court granted him the benefit of probation under Section 4 of the Probation of Offenders Act, 1958 and directed him to pay Rs. 20,000/- as compensation, of which Rs. 19,000/- was to be paid to the victim. Hence the instant appeal.

3. The appellant's counsel assailed the impugned judgment as being legally unsustainable, contending that the prosecution failed to establish the charges beyond reasonable doubt. It was argued that the Trial Court selectively appreciated evidence, ignoring the fact that key witnesses PW-1 and PW-4 turned hostile, and that Shiv Kumar, an allegedly injured eyewitness, was never examined.

Additionally, the counsel questioned the veracity of the recovery of the laptop, arguing that the complainant himself stated that it was broken during the incident, while the one produced in court was intact. Moreover, no ownership proof or identification was presented. The recovery of a stick from an open field without any public witness or Roznamcha entry was also challenged for lacking evidentiary value.

4. The learned Public Prosecutor supported the conviction, asserting that PW-2's testimony was credible and was corroborated by medical evidence. PW-3 Dr. Hariom Bansal confirmed that PW-2 sustained multiple injuries, including a compound fracture. It was submitted that the Trial Court took a fair and just approach by convicting the appellant only for proven offences and extending probation.

5. I have heard the counsel for the parties and perused the record of the case.

6. It is a well-established principle of criminal jurisprudence that every accused is presumed innocent until proven guilty. When the trial court has acquitted an accused, this presumption gains additional strength. The appellate court must, therefore, interfere with such an acquittal only when the findings are perverse, illegal, or wholly unsustainable.

6.1. In the recent case of *Mallappa & Ors. v. State of Karnataka*, Criminal Appeal No. 1162 of 2011, decided on 12.02.2024, the Hon'ble Supreme Court reiterated these principles and held:

"Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law are intended to prevent any failure of justice."

In paragraph 36, the Supreme Court laid down specific guiding principles:

- (i) The evidence must be appreciated in its entirety, not selectively;
- (ii) Partial or skewed appreciation leads to miscarriage of justice;
- (iii) If two plausible views arise, the one favouring the accused should prevail;
- (iv) Reversal of acquittal demands a finding of perversity or misappreciation of evidence.

In the present case, the Trial Court's decision to acquit the co-accused was based on careful analysis. No test identification parade was conducted, and other than PW-2, no material prosecution witness supported the charge. In light of *Mallappa* (supra), this Court finds no reason to interfere with the acquittal.

6.2. With regard to the present appellant, the Court notes that PW-2 made specific allegations against him, attributing acts of assault directly to him. These assertions were corroborated by medical reports (Exhibits P-4, P-6, and P-7), which confirmed multiple injuries, including a compound fracture. The testimony of PW-3, the examining doctor, substantiates the nature and severity

of injuries, thus providing a direct link between the appellant's conduct and the injuries suffered by PW-2.

6.3. The contention regarding the recovery of the laptop and stick merits scrutiny. It is true that there are inconsistencies regarding the condition and identification of the laptop, and the recovery of a stick from an open field, lacking corroboration from an independent witness or official record, diminishes its evidentiary weight. However, these discrepancies pertain to the looting allegation, for which the appellant has already been acquitted. They do not impinge upon the credibility of the evidence relating to the physical assault.

6.4. This Court is of the view that the Trial Court conducted a meticulous evaluation of the evidence, separating reliable facts from exaggeration. It arrived at its conclusion after filtering credible testimony and supporting documents from unsupported or exaggerated claims. While acquitting the appellant of the more serious charges, it rightly convicted him for the proven offences of voluntarily causing hurt and grievous hurt.

6.5. So far as the question regarding grant of probation is concerned, it was a considered decision, taking into account the appellant's young age, absence of criminal antecedents, and the fact that the incident appeared to be isolated. The compensation of Rs. 20,000, including Rs. 19,000 to the victim, reflects a fair and proportionate response.

7. In view of the foregoing analysis and guided by the jurisprudential framework laid down in *Mallappa* (supra), this

Court finds no infirmity in the judgment passed by the learned Trial Court. The acquittal of the co-accused is affirmed, and the conviction of the appellant under Sections 323 and 325 IPC is upheld. The order granting probation and directing compensation is also found to be just and reasonable.

8. Accordingly, this Court finds no perversity, illegality, or infirmity in the judgment dated 09.12.2024 passed by the learned Trial Court and the conviction of the appellant under Sections 323 and 325 IPC and the consequential order extending probation under Section 4 of the Probation of Offenders Act are hereby **affirmed**. The appeal, being devoid of merit, stands **dismissed**.

9. Let the record be transmitted back to the court below forthwith.

(FARJAND ALI),J