

**Raj Kumar vs.state**

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**SooperKanoon Citation :** [sooperkanoon.com/1221350](http://sooperkanoon.com/1221350)

**Court :** Delhi

**Decided On :** Feb-13-2019

**Appellant :** Raj Kumar

**Respondent :** State

**Judgement :**

\* IN THE HIGH CO URT O F DE L HI AT NEW DE LHI % Judgment reserved on:

04. h February, 2019 Judgment delivered on:

13. h February, 2019 + CRL.A. 1091/2018 & CrI.M.(Bail) 1695/2018 & CrI.M.A. 50253/2018 (Probation) RAJ KUMAR STATE versus ..... Appellant ..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Mr.Amit Kumar and Mr.Subhash Baghel, Advs. For the Respondent: Mr.Hirein Sharma, APP CORAM:-

"HONBLE MR JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J CRL.A. 1091/2018 & CrI.M.(Bail) 1695/2018 & CrI.M.A. 50253/2018 (Probation) 1. Appellant impugns order on conviction dated 06.07.2018 convicting the Appellant for the offence punishable under section 3 IPC and order on sentence dated 09.07.2018 directing the Appellant to undergo rigorous imprisonment for a period of two years with fine of Rs 5000/- and in default thereof to undergo simple imprisonment of three months. CRL.A.

1091/2018 Page 1 of 5 2. Case of the prosecution is that on 05.09.2012 at around 9:00 pm Appellant along with 4-5 other persons physically assaulted the complainant with wooden sticks, iron pipes and glass bottles outside his house causing injury on his head and other body parts. It is alleged that the quarrel between the parties took place over possession of land.

3. In support of its case, prosecution examined 11 witnesses. The statement of the injured/complainant (PW1) was corroborated by the statement of his wife (PW4) and a tenant (PW5). Further medical evidence brought on record by Dr. Mohd. Parvej Salam (PW7), Dr. Bhavesh Chadha (PW9) and Dr. Jaskaran (PW10) supported the case of the prosecution and proved the nature of injuries sustained.

4. Based on the evidence on record the Trial court inter-alia held as under: The prosecution has given a clear account of events and has proved that accused Raj Kumar had assaulted and injured Rakesh pitilessly. The prosecution has been successfully able to prove its case within the ambit of provisions of Section 308 IPC beyond reasonable doubt against accused Raj Kumar. 5. Appellant impugns his conviction and sentence. It is inter alia contended that the Trial Court has erred in not appreciating that there were material contradictions in the version given by different prosecution witnesses and the prosecution had failed to establish the involvement of the petitioner. CRL.A. 1091/2018 Page 2 of 5 6. Pending the disposal of appeal, Appellant has filed subject application under section 360 Cr.P.C and under section 4 of Probation of Offenders Act seeking benefit under it.

7. It is submitted by Learned counsel for the Appellant, that the Appellant is the sole bread earner of the family. He has the responsibility of his minor son and aged parents who are suffering from various old age ailments. The family of the Appellant has financial stringency. It is difficult for them to meet their day to day expenditure and the education of the minor son is getting hampered due to economic condition.

8. Report was called for from the probation officer. Report dated 01.02.2019 submitted by the probation officer shows that enquiry made confirm that accused has aged parents, wife and a minor son in his family. Father of the accused is medically unfit and requires medical treatment. Accused is the sole bread earner

of the family.

9. Record reveals that accused has no criminal antecedents except the subject case. No behavioural pattern was observed and has no habit of any kind of addiction. Probation officer has reported that the accused is repentant of his past misdeed and there does not appear to be a future possibility of committing crime or organize any criminal activity. Report further indicates that the accused has been rectified and is ready to comeback to society and his family. CRL.A. 1091/2018 Page 3 of 5 10. Reliance may be had to the decision in Rattan Lal vs. State of Punjab: AIR 1965 SC444 wherein the Supreme Court noted the philosophy behind the grant of probation:-

"The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.. 11. Court has to consider the circumstances of the case, nature of offence and character of the offender while exercising the power which is discretionary. Powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Court even at appellate or Revisional stage.1 12. Though Appellant has been convicted under Sections 3 of the IPC but in the facts and circumstances of the present case and after considering the nature of the offence, the character of the offender, the report of the Probationary Officer, Appellant herein leading a disciplined life on the reformed path and having a fixed place of abode, I am of the view that this is a fit case for extending the benefit of Section 4 of Probation of Offenders Act to the Appellant. 1 Sitaram Paswan v. State of Bihar; AIR 2005 SC3534CRL.A. 1091/2018 Page 4 of 5 13. Therefore, while confirming the conviction of appellant under Section 308/ 34 of IPC, it is directed that he be released on probation on entering into a bond, within a period of two weeks from today, in the sum of Rs. 10,000/- with one surety of like amount, before the concerned trial Court, for keeping peace and good behaviour for a period of one year. In case Appellant does not maintain good conduct during the period of probation then he shall be liable to undergo the substantive sentence as awarded by the Trial Court.

14. Applications and the Appeal are disposed of in the above terms.

15. Order Dasti under the Signatures of Court Master FEBRUARY13 2019/HJ  
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