



\$~16

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

+ **CRL.A. 180/2023**

STATE OF NCT OF DELHI

.....Appellant

Through: Mr. Aashneet Singh, APP
for the State with SI K.P.
Singh, PS New Ashok
Nagar.

versus

FAIM AHMED

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **16.04.2025**

1. The present appeal is filed challenging the order on sentence dated 23.10.2021 (**'impugned order on sentence'**) passed by the learned Additional Sessions Judge-02, East District, Karkardooma Courts, Delhi in Sessions Case No. 1742/2006, arising out of FIR No. 308/2005 registered at Police Station New Ashok Nagar, for offences under Sections 307/34 and 174A of the Indian Penal Code, 1860 (**'IPC'**). The grievance of the appellant/State is limited to the extent that the sentence awarded to the respondent is grossly inadequate and seeks enhancement thereof.

2. The brief facts, as narrated in the prosecution case, are that on the intervening night of 10/11.07.2005 at about 1:45 AM, Shamim Ahmed (PW-3) and Ramu (PW-2), while travelling on a tractor, were intercepted by two unknown assailants on a Maruti vehicle. One of the attackers fired a shot from a country-made pistol (katta), injuring Shamim Ahmed in the jaw. The attackers,

This is a digitally signed order.

The authenticity of the order can be verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2025 at 15:55:36



injured was taken to the hospital by Mohd. Ismail, and the police were informed, leading to the registration of FIR No. 308/2005. The respondent and other accused persons were allegedly identified during the course of investigation and were also arrested.

3. Following the investigation, chargesheet was filed, and charges were framed under Section 307/34 of the IPC. During the pendency of trial, the respondent was granted bail on 10.04.2007 but subsequently absconded, leading to his declaration as a proclaimed offender on 11.09.2009. The trial proceeded against co-accused Fateh Khan and Jalaluddin, both of whom were acquitted on 24.05.2010 as PW-2/Ramu and PW-3/complainant failed to identify them in the Court.

4. After more than a decade, the respondent voluntarily surrendered on 03.08.2021 and pleaded guilty to the charges under Sections 307/34 and 174A of the IPC. The learned Trial Court, taking into account the period already undergone in custody (approximately 1 year and 11 months), as well as various mitigating circumstances, sentenced him accordingly without imposing any further custodial sentence beyond the period already undergone.

5. The respondent, by the order of conviction dated 23.10.2021, was convicted for offences under Section 307/34 and 174A of the IPC.

6. By the order on sentence dated 23.10.2021, the respondent was sentenced to undergo the period of imprisonment already undergone. The respondent, at that stage, had already undergone about 23 months in custody.

7. The State contends that the learned Trial Court erred in

This is a digitally signed order.

The authenticity of the order can be verified from Delhi High Court e-Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2025 at 15:55:36



taking a lenient view, particularly in light of the respondent's prolonged abscondence, and submits that such undue leniency undermines public faith in the administration of criminal justice. Reliance is placed on various judgments, including ***State of M.P. v. Saleem @ Chamaru : (2005) 5 SCC 554*** and ***Shankar v. State of U.P. : (2004) 3 SCC 793***, to emphasize the principle that undue sympathy resulting in disproportionate sentencing is impermissible.

8. The short question that falls for the consideration of this Court is whether the sentence awarded to the respondent by the learned Trial Court—limited to the period of custody already undergone—is just, reasonable, and proportionate, or whether the same warrants enhancement in view of the gravity of the offence and the respondent's conduct.

9. The offence for which the respondent has been convicted under Section 307/34 of the IPC is undeniably a grave and serious offence. The facts emerging from the record reveal that on the intervening night of 10/11.07.2005, the respondent, along with two others, intercepted the victims' tractor and, without provocation, fired upon them using a country-made pistol. The bullet hit PW-3 on the right side of his face and lodged in his jaw.

10. However, in evaluating the appropriateness of the sentence awarded, this Court is guided not merely by the seriousness of the charge but also by the quality of evidence and the legal basis of the conviction. It is evident from the record that the respondent was convicted solely on the basis of his plea of guilt recorded under Section 313 of the CrPC. The order of conviction indicates

that one of the eye-witness of the incident (PW-2) had failed to identify the respondent as the assailant. The learned Trial Court

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2025 at 15:55:36



also noted that PW-3 though identified the respondent to be one of the three persons who had stopped the vehicle but had not identified the other co-accused persons. PW-3 also did not ascribe the act of firing to the respondent.

11. The conviction against the respondent, thus, is not based on ocular evidence or direct proof but rather upon his own admission, coming nearly 16 years after the incident.

12. The delay in facing trial is another relevant consideration. It is an admitted position that the respondent, after being granted bail in 2007, absconded and was declared a proclaimed offender in 2009. The prosecution asserts that this conduct alone merits imposition of a harsher sentence. This Court, however, notes from the learned Trial Court's record that the respondent's eventual surrender in 2021 was voluntary. His explanation that he was unaware of the status of the trial and was misinformed by previous counsel that the case had concluded, may not exonerate him entirely, but the sincerity of his surrender and his subsequent conduct before the court are mitigating factors deserving of consideration.

13. Importantly, the learned Trial Court, while sentencing the respondent, took note of relevant mitigating circumstances. It was recorded that the respondent is married, has three children, and hails from a socio-economically underprivileged background. He has no history of criminal conduct either before or after the incident, and was engaged in daily wage labour to support his family. These facts indicate rehabilitation and reintegration potential, a factor that weighs heavily in sentencing policy rooted in the rehabilitative model of justice.

14. This Court is further guided by the law laid down by the Hon'ble Apex Court in **Surinder Singh v. State (Union Territory**

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2023 at 14:55:36.



of Chandigarh) : (2021) 20 SCC 24, which reaffirms that sentencing must be guided by the principle of proportionality. The Apex Court emphasized that the ‘bedrock of sentencing policy’ must account not only for the gravity of the offence but also for the conduct of the offender, his motive, and the likelihood of reformation. The relevant para of the judgment is reproduced hereunder :

“Quantum of Sentence under Section 307 IPC

34. The equality of ratio between two sets of variables is now well known as the doctrine of proportionality. The bedrock of sentencing policy in our criminal justice system is also based on the axiom of proportionality. This principle of commensurate sentencing treats offenders as agents capable of evaluating their own illegal conduct and the social censure associated with it, which is communicated to them by imposing a proportionate sentence. The exercise for assessing ‘proportionality’ is thus dependent upon the gravity of the offence which is determined according to - (a) mischief caused or risk involved in the offence; (b) the overall conduct of the offender and (c) motives ascribed to the felon. Further, the equality of treatment so as to eliminate discriminatory practices in the award of sentencing, is integral to the canons of proportionality. Needless to say, the guarantee of even-handedness before the law(s), as enshrined in Article 14 of our Constitution, encompasses the administration of criminal justice system as well.

35. Having said that, we cannot be incognizant of the fact that there are practical difficulties in achieving absolute consistency in regards to sentencing. It must be candidly acknowledged that there is an element of discretion present while adjudicating the issue of sentence, however, the same cannot be exercised in an unprincipled manner. This Court has explicitly ruled out the practice of awarding disproportionate sentences, especially those that showcase undue leniency, for it would undermine the public confidence in efficacy of law.

36. The sentencing policy, therefore, keeps pace with changing time. Undoubtedly, the primary emphasis while deciding the quantum of sentence should lie on the gravity or penal value of the offense. However, other guiding elements of rehabilitative justice model, including, appreciation of grounds for mitigation of sentence also deserve to be duly considered within the permissible limits of judicial discretion. The awarding of just and proportionate sentence remains the solemn duty of the Courts and they should not be swayed by nonrelevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as ‘relevant’ or ‘non-relevant’ will depend on the facts and circumstances of each case, and no straight jacket formula can be laid down for the same.”

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2025 at 15:55:36



15. The Hon'ble Apex Court in the case of **Surinder Singh v. State (Union Territory of Chandigarh)** (*supra*) had upheld the conviction of the convict under Section 307 of the IPC but had reduced his sentence to the period as already undergone and held as under:

"37. Adverting to the facts of the case, in hand, we are of the considered view that at this stage, the sentence awarded to the appellant is no longer in degree to the crime which he has committed. Remitting the Appellant to the rigors of imprisonment at this juncture of his life would not serve the ends of justice due to following mitigating factors:

37.1. No motive or element of planning has been proved by the Prosecution in the present case which indicates the possibility that the offense could have been committed on impulse by the Appellant. Hence, the culpability of the offender in such situations is less than that which is ascribed in premeditated offenses as the commission of planned illegal acts denotes an attack on societal values with greater commitment and continuity in comparison to spontaneous illegal acts.

37.2. Even though the factum of injury may not have a direct bearing on a conviction under Section 307 IPC, the same may be considered by a Court at the time of sentencing. No doubt, the offence committed by the Appellant squarely falls within the four corners of Section 307 IPC, but fortunately neither the complainant nor any other person was hurt by the untoward act of the Appellant.

37.3. Appellant has already undergone a sentence of 3 months and 19 days. Additionally, despite the occurrence taking place in 1999, there is no indication that Appellant has been involved in any untoward activity before or after the incident. This highlights the Appellant's good character and indicates that the incident can be interpreted as an isolated lapse of judgment. Further, the Appellant's clean post incident behavior suggests that he is rational individual who is capable of responding to the social censure associated with the offence. Hence, the passage of a long time period coupled with a clean record, both before and after the incident is definitely a factor that calls for mitigation of sentence.

37.4. Barring this particular incident wherein he was under the influence of alcohol, the Appellant had an unblemished service record with sixteen good citations in his favour. This indicates that he was a valuable member of society than the present criminal incident might lead one to assume. This is not to say

that courts should draw up a social balance sheet when sentencing, but only to take these positive social contributions as a factor for mitigation of sentence.

This is a digitally signed order.

The authenticity of the order can be verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server for 300402552110538.



37.5. Lastly, it is to be noted that the Appellant was suspended in the year 1999 and has also been subsequently dismissed from service in the year 2007. Hence, this should also be considered as a reasonable factor for mitigation because the dismissal and the consequent loss of social security benefits such as pension, also construes as a form of social sanction.

Conclusion

38. Consequently and for the afore-stated reasons, the criminal appeal is partly allowed. While the conviction and sentence awarded to the Appellant under Section 27 of the Arms Act is set aside, his conviction under Section 307 IPC is maintained. The sentence under Section 307 IPC is however reduced to the period already undergone. Since, Appellant is on bail, his bail bonds are discharged.”

16. Sentencing is not a mathematical exercise. It is a calibrated balance between the ends of justice and the reformation of the offender. This Court finds that the learned Trial Court judiciously exercised its discretion after appreciating the totality of circumstances and the limited evidentiary basis of the conviction. The sentence awarded cannot be said to be manifestly inadequate or arbitrary so as to warrant interference in appellate jurisdiction.

17. Therefore, in view of the mitigating circumstances, the passage of time since the offence, the respondent’s plea of guilt, and absence of aggravating conduct since then, this Court is of the considered opinion that no case for enhancement of sentence is made out.

18. In view of the above the present appeal is dismissed.

19. Pending applications if any also stand disposed of.

AMIT MAHAJAN, J

APRIL 16, 2025/‘KDK’

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.

The Order is downloaded from the DHC Server on 30/04/2025 at 15:55:36