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

Reserved on: 13th October, 2025
Date of Decision: 17th October, 2025

+ **CRL.A. 323/2003**

MOHD. SAJID

.....Appellant

Through: Mr. Javed Khan and Mr. Suhail Azhar,
Adv.

versus

THE STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
State with SI Amit Kumar, P.S.
Badarpur, Delhi.

CORAM:

HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

1. The present appeal is filed on behalf of the appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “CrPC”) against the judgment dated 19th April, 2003 (hereinafter referred to as the “*impugned judgement*”) and against the Order-on-Sentence dated 19th April, 2003 (hereinafter referred to as the “*impugned Order on Sentence*”) passed by the court of Additional Sessions Judge, New Delhi (hereinafter referred to as the “*Trial Court*”) in Sessions Case bearing No. 155/2002 arising out of the FIR bearing No. 469/1998 registered at Police Station- Badarpur, New Delhi. The appellant *vide* the impugned judgement was held guilty for committing the offences punishable under Section 452, 324 and 506 (ii) of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC”). The Appellant *vide* the



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impugned Order on Sentence dated 19th April 2003 was sentenced to undergo Rigorous Imprisonment for a period of 03 years along with a fine of ₹ 1,000/-, and in default, convict was sentenced to undergo Simple Imprisonment for a period of 01 month for the offence punishable under Section 452 of IPC. The Appellant was also sentenced to undergo Rigorous Imprisonment for a period of 01 year along with a fine of ₹ 1,000/-, and in default, convict was sentenced to undergo Simple Imprisonment for a period of 01 month for the offence punishable under Section 506 (ii) of IPC. The Appellant was also sentenced to undergo Rigorous Imprisonment for a period of 01 year for the offence punishable under Section 324 of IPC and all the sentences were directed to run concurrently.

2. Briefly stated, the Prosecution's case is that on 18th July, 1998, information was received at Police Post Sarita Vihar that a thief had been apprehended at House No. E-193, Sai Bagh. The said information, recorded vide DD No. 49, was entrusted to SI Akhilesh Yadav for investigation. At the spot, the Complainant, Iqbal Ahmed, produced the appellant before the IO along with a country-made pistol and two live cartridges. The IO recorded the statement of Iqbal Ahmed, who stated that he, along with his wife, was sleeping in one room, while his daughters, Fabiha and Fahima, were sleeping in another room. At about 2:30 a.m., his daughter Fabiha raised an alarm. On hearing the same, he rushed to her room and found the appellant standing there with a country-made pistol in his hand. The appellant placed the pistol on his chest and threatened to shoot him if he raised an alarm. When the complainant gathered courage and attempted to push the appellant's hand aside, the appellant fired a shot. The bullet passed close to his left ear, and the gunpowder particles entered his eyes. The



appellant has entered into his house during the night with the intention to commit theft. The Police arrested the appellant and seized the country-made pistol, two live cartridges and one fired cartridge from his possession.

3. After completion of Investigation, a chargesheet was filed under Sections 459/307/506 of the IPC and under Section 25, 27 of the Arms Act, in the Court. Charge under Sections 459/506(ii)/307 IPC was framed against the appellant to which he pleaded not guilty and claimed trial. The Prosecution, in order to prove its case, examined 11 witnesses. The statement of the appellant was recorded under Section 313 of the CrPC, wherein the appellant had denied all incriminating evidences and pleaded innocence and claimed false implication. The learned trial court, after appreciating the evidence on record, convicted the appellant for the offences punishable under Sections 452, 324 and 506 (ii) IPC. Being aggrieved and dissatisfied with the said judgement of conviction and order on sentence, the appellant has preferred the present appeal before this Court.

4. Learned Counsel for the appellant has argued that the learned trial court has passed the impugned judgment on the basis of surmises and conjectures, contrary to the material facts and evidence on record. It is submitted that there are material contradictions and inconsistencies in the testimonies of the prosecution witnesses. It is further contended that the identity of the appellant has also not been established beyond reasonable doubt, thereby rendering the prosecution case doubtful. On these grounds, it is prayed that the impugned judgement be set aside and the appellant be acquitted of all the charges, as the prosecution has failed to prove its case beyond reasonable doubt.



5. On the other hand, learned APP for the State has argued that the learned trial court has passed the impugned judgment after considering the evidences on record. It is submitted that the evidences produced on behalf of the prosecution have proved the case beyond reasonable doubt. Hence, the arguments of the appellant are without any merits. The appeal is liable to be dismissed.

6. I have heard the learned Counsel for the appellant as well as learned APP for the State and have examined the record.

7. PW-1, Sh. K.C. Varshney, Senior Scientific Officer from the FSL, has proved the FSL report as Ex. PW-1/1 and has opined that the country-made pistol, two live cartridges and one fired cartridge are arms and ammunition within the meaning of The Arms Act.

PW-3, Dr. Vivek Gogia, has proved the sanction granted under Section 39 of The Arms Act, which is Ex. PW-3/1.

PW-4, PW-7, PW-8 and PW-9 are formal witnesses.

PW-2, Smt. Fabiha, is the material witness of the case. She deposed that in July, 1998, she was residing at E-192, Abdul Afzal Part-II, New Delhi. On the intervening night of 17th/18th July, 1998, she and her sister Fahima was sleeping in one room, while their parents were sleeping in an adjoining room. At about 2.30 a.m., the appellant entered the room where she and her sister were sleeping. The appellant placed the revolver on her chest, and asked her to hand over whatever valuables they had. He asked her where the money was kept, and she told him that it was under the mattress on which she was sleeping. The appellant then asked her to get up. After getting up, she gathered courage and turned the barrel of the country-made pistol held by the appellant towards the ceiling, while simultaneously



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calling her father. The appellant tried to run away, but she caught hold of his hands in order to ensure that he is not able to escape. Her father immediately reached the room. At that point, the appellant pointed the pistol towards her father's chest. Her father, however, managed to divert the barrel of the pistol upwards, towards the roof. The appellant fired a shot from the pistol, but the bullet did not hit anyone. However, the gun powder particles entered into the eyes of her father. PW-2 also stated that upon the appellant's search, two live cartridges were recovered from his pocket. In the meantime, neighbors who had gathered at the spot apprehended the appellant and gave him a beating. Someone from the neighborhood informed the police, and upon arrival, the appellant was handed over to them along with the country-made pistol and cartridges recovered from him. One fired cartridge was found in the pistol when it was checked by the police. The weapons and cartridges were thereafter seized by the police.

8. PW-10, Sh. Iqbal Ahmed, is the Complainant and a material witness of the case. He deposed that on 18th July, 1998, he was residing as a tenant at House No. E-193, Abul Fazal Enclave, New Delhi. On the night of this incident, he and his wife were sleeping in one room while his daughters, Fabia and Fahima, were sleeping in the adjoining room. At about 2.45 A.M., his daughter Fabia raised an alarm. On reaching the room, he found one person present there, holding a pistol in his hands. The said person aimed the pistol at him and threatened to shoot him if he raised an alarm. When he moved his head, the appellant fired from the pistol, and the bullet passed close to his left eye. The appellant was apprehended by his wife and daughters. The neighbors also reached the spot upon hearing the sound of the gun shot. The pistol was snatched by his wife and daughter from the



appellant, who was then handed over to the police along with the pistol and probably 3-4 cartridges. He stated that due to the passage of time, he was unable to identify whether the appellant was the same person involved in the incident or not.

PW-11, SI Akhilesh Yadav, is the Investigating Officer of the case. He deposed that on 18th July 1998, on receipt of DD No. 49, he, along with Head Constable Mahilal, went to the spot, where the complainant handed over one country-made pistol and 2 live cartridges along with the appellant. He recorded the statement of the complainant, which is Ex. PW-10/1. He prepared the sketch of the pistol and cartridges and seized the same vide Ex. PW-6/2. The appellant was arrested at the spot. He also prepared the site plan, which is EX. PW-11/2.

PW-5, Constable Mahilal and PW-6, Constable Naresh Kumar, who had accompanied PW-11 to the spot, have deposed on similar lines as PW-11 and corroborated the seizure and arrest proceedings.

9. PW-2 and PW-10 are the material witnesses of the case and have supported the case of the prosecution. PW-2 has identified the appellant. PW-5, PW-6 and PW-11 have supported the case of the prosecution regarding the arrest of the appellant at the spot and the seizure of the pistol and cartridges as recovered from the possession of the appellant.

The argument of the learned Counsel for the appellant that PW-10 did not identify the appellant and therefore, the prosecution case becomes doubtful, is without any merits. PW-2 has identified the appellant. PW-5, PW-6, and PW-11 have also identified the appellant who was handed over to them by PW-10 and was arrested at the spot.

PW-2 and PW-10 were cross-examined on behalf of the appellant;



however, no such material has been come on record to disbelieve their testimonies. They have no grudge or reason to depose against the appellant.

The learned Counsel for the appellant has also failed to prove on record any material contradictions in the testimonies of the prosecution witnesses which may affect the case of the prosecution on merits.

10. PW-10 has also received injuries to his eye on account of firing from the pistol by the appellant, which is corroborated by the testimony of PW-2. In this regard, it is pertinent to refer to the observations of the Hon'ble Supreme Court in *State of Uttar Pradesh v. Naresh and Ors.*, (2011) 4 SCC 324, concerning the evidentiary value of an injured witness, which are as under:

"27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy 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. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, 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."

11. In view of the analysis hereinabove, this Court is of the opinion that the prosecution has proved its case beyond reasonable doubt against the appellant for the offences punishable under Section 452, 324, 506 (ii) IPC. Thus, the conviction of the appellant as recorded by the learned trial court



does not warrant any interference by this court and accordingly, the impugned judgement as to the conviction is upheld.

12. Learned Counsel for the appellant, however, submits that at the time of the commission of the offence, the appellant was about 18-19 years of age. The appellant has no previous criminal record and is presently aged 42 years. It is further submitted that the appellant is married, has six minor children and is the sole earning member of the family. It is urged that sending him to jail at this stage would cause irreparable hardship to his dependents, and his entire family would be ruined. The appellant has also remained in jail for about 15 days. On these mitigating grounds, it is prayed that the appellant be released on probation and that the sentence awarded be modified accordingly.

13. The Hon'ble Supreme Court in *Mohammad Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287, while emphasizing the reformatory theory of punishment, observed as under:

“9. It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an “in terrorem” outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.”

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16. A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence.”

Similarly, in *Pramod Kumar Mishra v. State of Uttar Pradesh, 2023 SCC OnLine SC 1104*, the Hon’ble Supreme Court, while relying on the judgment of Mohammad Giasuddin (supra) reiterated the importance of considering mitigating factors while awarding sentence, particularly in cases involving long pending prosecutions, has held as under:

“10. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.”

Further, in *K. Pounammal v. State Represented by Inspector of Police* reportable as 2025 INSC 1014, the Hon’ble Supreme Court held as under:

“6. The conviction and sentence have their respective realms. While the conviction would be recorded on the basis of evidence adduced before the Court which would establish the implication of the accused in the offence, the guilty person or the convicted when to be awarded a sentence, a host of factors would operate to govern.”

“6.1. In determining the final sentence and the nature thereof,



variety of factors that would operate would include the intervening time between the commission of offence and the actual award of the sentence, age of the accused, the stress which he or she might have suffered because of passage of time during each case has remained pending and undecided, the family circumstance and such other factors, without becoming exhaustive.”

“7. The process of sentencing by the courts is guided by theories such as punitive, deterrent or reformatory. Each school of thought has its own object and purpose to explain awarding of sentence and its utility. Amongst these theories, reformatory approach has become increasingly acceptable to the modern jurisprudence. Reformation is something always considered progressive. When there are mitigating circumstances, the court would lean towards reducing of the sentence. The focus would be on the crime, and not on the criminal. The society and system would nurture the guilt with positivity, while selecting the sentence.”

14. Coming to the facts of the present case, the incident occurred about 27 years ago, and the impugned judgement itself was delivered nearly 22 years ago. The appellant has faced the trauma of criminal trial for over two decades. There is no material on record to show that the appellant is involved in any other criminal case. The appellant has already remained in jail for about 15 days. In these circumstances, sending him to jail at this stage would be too harsh.

15. After considering the aforesaid judgements, mitigating facts and circumstances of the case, the sentence awarded vide order dated 19th April, 2003 is modified to the extent that the appellant is directed to be released on probation of good conduct on his furnishing a bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the learned trial court to be filed within 15 days from today, for a period of one year and to appear and receive sentence when called upon during the said period and in the



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meantime to keep peace and be of good behaviour.

16. Accordingly, the present appeal stands disposed of in the aforesaid terms. All pending applications, if any, also stand disposed of.

17. Let a copy of this judgment be communicated forthwith to the concerned trial court for information and necessary compliance.

**RAJNEESH KUMAR GUPTA
(JUDGE)**

OCTOBER 17, 2025/sds/tp