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

+ **CRL.A. 227/2020**

STATE

.....Appellant

Through: Mr. Ajay Vikram Singh,
APP for the State along
with SI Shankar P.S.
Swaroop Nagar.

versus

RAJESH PASWAN & ORS.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.05.2025

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1. The present appeal is filed challenging the order on sentence dated 23.10.2019 (**'impugned order on sentence'**) passed by the learned Additional Sessions Judge – 04, Rohini Courts, Delhi in Sessions Case No. 59448/2016, arising out of FIR No. 347/2016 registered at Police Station Swaroop Nagar, for offences under Sections 458/395/34 and 412 of the Indian Penal Code, 1860 (**'IPC'**).

2. The State/ appellant has challenged the impugned order on sentence to the limited extent that the respondents were convicted for the said offences and they have only been sentenced for the period already undergone (approximately 3 years and 1 month and 9 days) in case of Respondent Nos. 2 to 5 and period of 4 years in respect of Respondent No.1 who was additionally sentenced for the offence under Section 412 of the IPC.

3. The brief facts, as narrated in the prosecution case, are that

CRL.A. 227/2020

Page 1 of 7



on 25.08.2016 at around 3:00 am while Tej Singh (PW – 1) and his family members were sleeping, 3 – 4 persons who were armed with iron rod and knife entered into his room. While showing them the knife, they threatened to kill them and tied him and his family members.

4. Pursuant to which, they took two mobile phones, gas cylinder kept in the kitchen and the gas chulha and loaded the same in their vehicle. They also loaded the scrap that was kept in the godown and fled away.

5. From the statement made by PW – 1/ complainant, the police registered FIR No. 347/2016 under Sections 458/392/397/34 of the IPC. Statements of the family members of the complainant were also recorded, who deposed on similar lines as the complainant.

6. The complainant further produced a broken lock, with which the main gate was locked and after breaking the same the vehicles that was used by the accused/ respondents was brought inside the premises.

7. On 11.09.2016, information was received by the police that accused/ respondents had been arrested in some other case and they had disclosed about their involvement in the present case. Pursuant to which, on 14.09.2016 after taking permission from the learned Trial Court, the accused/ respondents were arrested in the present case.

8. On 15.09.2016, an application for conducting the TIP of the accused/ respondents was moved but they refused their TIP. The accused/ respondents were taken to two days of police remand and they pointed out the spot of the incident. Pursuant to which the complainant and his family members identified all the



accused/ respondents before the learned Trial Court.

9. After completion of the investigation, chargesheet under Sections 458/394/395/397/411/506/34 of the IPC was filed against the accused/ respondents. Cognizance was taken by the concerned magisterial court and was later transferred to the Court of Sessions.

10. The learned Trial Court on 27.02.2017 framed charges against the accused/ respondents under Sections 458/34 and Section 395 of the IPC. Separate charge under Section 412 of the IPC was framed against Respondent No. 1. All the five accused pleaded not guilty to the said charges framed and claimed trial.

11. The prosecution in order to prove its case, examined 16 witnesses till 16.07.2019. On 25.09.2019 all the accused/ respondents had moved separate applications for pleading guilty with their own free will and without any force, coercion and pressure from any corner.

12. The learned Trial Court recorded their statement to the said effect and after making necessary enquiry was satisfied that accused/ respondents have voluntarily pleaded guilty for the charged offences.

13. The learned Trial Court vide the order on conviction dated 19.10.2019 convicted the accused/ respondents for the offence under Sections 458/395/34 of the IPC. Respondent No. 1 was additionally convicted for the offence under Section 412 of the IPC.

14. By the impugned order on sentence, the learned Trial Court, taking into account the period already undergone in custody (approximately 3 years 1 month and 9 days), as well as various mitigating circumstances, sentenced them accordingly



without imposing any further custodial sentence beyond the period already undergone.

15. Learned Additional Public Prosecutor for the State submits that the accused/ respondents have been let off even after committing such serious offences and ought to have been adequately punished.

16. He further submits that the learned Trial Court has failed to appreciate that the accused/ respondents have committed an offence under Section 458 of the IPC which prescribes a punishment of imprisonment for a term which may extend up to 14 years.

17. He also submits that an offences under Section 395/412 of the IPC prescribes punishment of imprisonment for life, or with rigorous imprisonment for a term which may extend up to ten years.

18. The learned Additional Public Prosecutor for the State lastly submits that the learned Trial Court erred in taking a lenient view, 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 ***Gopal Singh v. State of Uttarakhand : (2013) 7 SCC 545***, to emphasize the principle that undue sympathy resulting in disproportionate sentencing is impermissible.

19. I have heard the Additional Public Prosecutor for the State and perused the record.

20. 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.

21. The learned Trial Court in the impugned order on sentence noted that convicts are sole bread earner of their family. It is further noted that except Respondent No.1, all other convicts are first time offender.

22. The learned Trial Court further noted that all the respondents belong to poor strata of society and they have already spent more three years in custody. Thus, considering the mitigating circumstances, the learned Trial Court convicted the respondents for the period already undergone.

23. The offences for which the accused/ respondents have been convicted are undeniably grave and serious offences. The facts emerging from the record reveal that the accused/ respondents did enter the room of the complainant and took away the said articles.

24. 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 accused/ respondents have been convicted on the basis of their plea of guilt.

25. Hence, the conviction against the accused/ respondents, is not based on any ocular evidence or direct proof but rather upon their own admission.

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

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.”



27. 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.

28. 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.

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

30. Pending applications if any also stand disposed of.

AMIT MAHAJAN, J

MAY 16, 2025

SSC