



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

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Date of Decision: 21.11.2025

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CRL.A. 221/2018

TARA CHAND

.....Appellant

Through: Mr. Ajay Garg, Mr. Uday Garg and
Ms. Anusha Garg, Advocates,

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Rinku Kumari PS Khyala,
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present appeal, the appellant seeks to assail the judgment of conviction dated 22.12.2017 and order on sentence dated 23.12.2017 passed by ASJ/Special Judge, NDPS-02(Central) Tis Hazari Courts, Delhi, in SC no. 56791/16 arising out of FIR no. 231/11 registered under Sections 302/34 IPC at P.S. Khyala, Delhi.

2. Vide order on sentence, the appellant has been directed to undergo RI for a period of 10 years alongwith fine of Rs.50,000/- for the offence punishable under Section 304(Part II) IPC, in default thereof would further undergo RI for 6 months. The benefit of Section 428 Cr.P.C. has been provided to the appellant.

Vide order dated 27.11.2018, the sentence of the appellant was



suspended during the pendency of the present appeal.

3. Briefly put, the case of the prosecution is that in the intervening night of 25/26.09.2011, at about 01:00AM, at Footpath Road No. 29, near Cement Godown, Raghubir Nagar, New Delhi, the appellant, along with his two associates, *Vishal Kumar* and *Ajay @ Ghee* (both JCL), in furtherance of their common intention, committed the murder of *Ajju @ Mogli*.

4. In support of its case, the prosecution examined 11 witnesses. The most material witness, *Surender Singh*, an eyewitness to the incident, was examined as PW-3. Dr. *Yogesh Tyagi*, who conducted the post-mortem examination and proved the nature of injuries and cause of death, was examined as PW-1. *Uttam Sarkar*, who discovered the deceased lying in a pool of blood with multiple stab injuries and informed the police, was examined as PW-11. *Mahender Singh*, who identified the body as that of *Ajju @ Mogli*, a homeless drug addict known to him, was examined as PW-2. *Ashish* and *Vijay*, who were working in the same factory as the accused, were examined as PW-12 and PW-13, respectively. The remaining witnesses were formal in nature and deposed to various aspects of the investigation.

5. A perusal of the record indicates that the testimony of the eyewitness, PW-3 is clear, cogent and consistent, and he correctly identified the appellant during trial. Although PW-3 stated that it was *Ajay @ Ghee* who inflicted the stab wounds, the role of the appellant in holding the deceased and participating jointly is clearly established. Pursuant to appellant's disclosure statement, a light violet T-shirt (Ex. P-11) and a half jeans pant (Ex. P-12) were recovered. Though these clothes had been washed, their recovery and the presence of earlier stains lent corroboration to his involvement. On 28.09.2011, PW-3 also pointed out all three accused



persons at the bus stand, where the appellant was arrested on the spot. The post-mortem conducted by PW-1 Dr. *Yogesh Tyagi* revealed three deep stab injuries on the abdomen, liver, and stomach, caused by a single-edged sharp weapon. The cause of death was opined to be hemorrhagic shock due to multiple stab injuries. These findings were fully consistent with the eyewitness account. Thus, even though the appellant did not inflict the stab wounds himself, he jointly confronted the deceased, assisted in forcibly taking him across the road, caught hold of him enabling the co-accused to stab him, and fled along with the assailants. Accordingly, the conviction of appellant under Section 304(Part-II)/34 IPC is upheld.

6. At this stage, learned counsel for the appellant submits that the appellant, who is present in Court and has handed over his gate pass, which is taken on record, is remorseful and being fully aware of the consequences, does not wish to press the present appeal on merits. He accepts his guilt and prays that he be released on the period already undergone by him in custody. It is further submitted that the fine imposed upon him stands paid, and in this regard has handed over a copy of the fine receipt, which is taken on record.

7. Learned APP for the State submits that, as per the status report on record, the appellant has no other involvements.

8. A sentence must adhere to the principle of proportionality. A fair and suitable punishment should be arrived at by duly considering the specific facts and circumstances of each case, so as to achieve both deterrence and reformation. It requires a careful balancing of the aggravating and mitigating factors, as well as the surrounding circumstances of the offence, while keeping in mind the seriousness of the crime. No single factor, whether aggravating or mitigating, can, by itself, be conclusive in determining the



appropriate sentence. State of Madhya Pradesh v. Suresh¹ the Trial Court, while convicting the accused under Section 304(II) IPC, had awarded RI for 3 years. The Supreme Court, while affirming the Trial Court decision, further discussed the factors governing sentencing in the following manner:

“13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of.

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The Supreme Court in Mohd. Giasuddin v. State of A.P.² observed the following:-

“16. The new Criminal Procedure Code, 1973, incorporates some of these ideas and gives an opportunity in Section 248(2) to both parties to bring to the notice of the Court facts and circumstances which will help personalise the sentence from a reformative angle. This Court, in Santa Singh [Santa

¹ (2019)14 SCC 151

² (1977) 3 SCC 287



Singh v. State of Punjab, (1976) 4 SCC 190 : 1976 SCC (Cri) 546], has emphasised how fundamental it is to put such provision to dynamic judicial use, while dealing with the analogous provisions in Section 235(2):

“... 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. (p. 195)

The hearing contemplated by Section 235(2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the Court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, care would have to be taken by the Court to see that this hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonised with the requirement of expeditious disposal of proceedings.” (p. 196)

19. Sentencing justice is a facet of social justice, even as redemption of a crime-doer is an aspect of restoration of a whole personality. Till the new Code recognised statutorily that punishment required considerations beyond the nature of the crime and circumstances surrounding the crime and provided a second stage for bringing in such additional materials, the Indian Courts had, by and large, assigned an obsolescent backseat to the sophisticated judgment on sentencing. Now this judicial skill has to come of age.”

9. In the present case, the appellant is 34 years old, works as a hawker, and is the sole breadwinner of his family, which consists of his widowed mother, one sister, and a younger brother.

10. The nominal roll of the appellant on record, dated 19.11.2025, reflects



that he has undergone about 7 years and 8 months of his sentence including remission earned. His conduct in jail has been noted to be satisfactory.

11. The law regarding release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar Vs. State of Chhattisgarh, reported as **2021 SCC OnLine SC 3683**, and the relevant portion of the same is extracted hereinunder:

““28. We thus issue the following directions:

- a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.*
- b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.*
- c) We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.*
- d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.”*

12. Having regard to the fact that the incident pertains to the year 2011, and keeping in view the facts and circumstances noted hereinabove, as well as the decision in Sonadhar (supra), and noting that the appellant has already paid the fine, the substantive sentence of the appellant in the present appeal is hereby modified to the period already undergone by him.

13. The personal bond furnished by the appellant stands cancelled and the sureties are discharged.



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14. The present appeal is partly allowed and disposed of in the above terms.

15. A copy of this judgment be communicated to the concerned Jail Superintendent as well as to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 21, 2025/dh