(2025) 12 DEL CK 0015

Delhi HC

Case No: Criminal Appeal No. 428 Of 2004

Rakesh		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Dec. 5, 2025

Acts Referred:

- Code of Criminal Procedure Act, 1973- Section 313
- Indian Penal Code, 1860- Section 34, 308, 323

Hon'ble Judges: Rajneesh Kumar Gupta, J

Bench: Single Bench

Advocate: R. K. Singh, Mukesh Kumar, Naveen, Siddhanth Goyal, Arsalan Naik

Final Decision: Partly Allowed

Judgement

Rajneesh Kumar Gupta, J

1. By way of the present appeal, the appellant seeks to assail the judgment dated 29th April, 2004 and the order on sentence dated 15th May, 2004 passed by the trial Court arising out of the FIR bearing No. 153/02 registered at Police Station - Haus Khazi.

2. Vide the impugned judgment, the appellant was held guilty for committing the offence punishable under Section 323 r/w Section 34 of the Indian Penal Code (hereinafter “IPC”) and vide the impugned order on sentence, the appellant was sentenced to undergo Rigorous Imprisonment for a period of three months along with a fine of Rs. 3000/- and in default of payment of fine to further undergo Simple Imprisonment for a period of one month.

3. The appellant was charged under Section 308/34 IPC on the allegations that on 10th July, 2002 at about 8:00 AM at House No. 1656, Gali Himmat Garh, Sita Ram Bazar, Hauz Khazi, Delhi, he along with co-accused namely Panna Lal in furtherance of their common intention caused injuries on the person of Sharda with an iron pipe with such intention or knowledge and under such circumstances that if by that act he has caused the death of the injured, he would have been guilty of culpable homicide not amounting to murder. To the said charge, the appellant pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case has examined ten witnesses. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein the appellant had denied incriminating evidence and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

5. Learned Counsel for the appellant has submitted, on instructions, that the appellant is remorseful and, being fully aware of the consequences, does not wish to press the present appeal on merits and confines his submissions only to the quantum of sentence to be modified to the period already undergone.

Per contra, learned APP for the State has argued that the trial Court has passed the order on sentence after considering the material on record and there is no infirmity in the said order.

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

7. PW1 Smt. Sharda is the injured and is the material witness of the case. PW1 has supported the case of the prosecution. The testimony of PW1 as to injuries suffered by her in the said assault is also corroborated by her MLC Ex. PW8/A. PW3 Lakshmi Kant is the husband of PW1 and is the eye-witness to the said incident. PW3 has also supported the case of the prosecution.

Since the appellant has chosen not to press the present appeal on merits with respect to his conviction, this Court has not interfered with the findings of the conviction recorded by the trial Court and accordingly, the impugned judgment is upheld.

8. Insofar as to the modification of the sentence is concerned, it is submitted that the appellant is presently aged about 45 years. The wife of the appellant has expired, and he is now solely responsible for the care of his two minor daughters and one son aged about 13, 14, and 16 years, respectively. The appellant is a poor person and is employed in a train to earn his livelihood. In case the appellant is sent to jail, his entire family would be ruined.

9. The Hon'ble Supreme Court in *Mohammad Giasuddin vs State of Andhra Pradesh (1977) 3 SCC 287* has 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.

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. [As observed in Santa Singh v. State of Punjab, (1976) 4 SCC 190 at p. 191: 1976 SCC (Cri) 546]"

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."

10. Coming to the facts of the present case, the present case relates to an incident which has occurred 23 years ago while the impugned judgment itself was delivered nearly 21 years ago. The appellant has already remained in custody from 23rd July, 2002 till 30th July, 2002 and fine has already been deposited. Co-accused namely Panna Lal was sentenced to imprisonment undergone and a fine of Rs. 3000/-. The appellant would suffer undue hardship if incarcerated at this stage.

11. After considering the nature of the offence, mitigating facts and the law as noted above, this Court is of the opinion that this is a fit case for modifying the impugned order on sentence. Accordingly, while maintaining the conviction of the appellant, the substantive sentence of imprisonment of the appellant is modified to the period already undergone by him in jail.

12. The appeal is partly allowed in the above terms. Pending application(s), if any, stand disposed of.

13. A copy of this judgment be communicated forthwith to the concerned trial Court and the Jail Superintendent for information.