



**IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NORTH EAST DISTRICT)
KARKARDOOMA COURT: DELHI.**

CNR No. DLNE010024102020

SC No. 120/2020

FIR No. 65/2020

PS Dayalpur

U/s. 188 IPC/153A/147/148/365/302/149 IPC.

State

Versus

**1. Mohd. Tahir Hussain
s/o Sh. Kallan Saifi,
r/o H. No. F-7, Main Karawal Nagar Road,
Near Lakhpat Model School, Khajuri Khas,
Delhi.**

**2. Nazim,
s/o Md. Azeem,
r/o H. No. 1378, Gali No. 15,
Nala Road, Mustafabad, Delhi.**

**3. Kasim,
s/o Md. Azeem,
r/o H. No. 1378, Gali No. 15,
Nala Road, Mustafabad, Delhi.**

4. Anas,
s/o Sh. Idrish,
r/o Gali No. 1, Sanjay Chowk,
Mustafabad, Delhi.

5. Javed,
s/o Sh. Jafruddin,
r/o Gali No. 2, Near Sanjay Chowk,
Moonga Nagar, Delhi.

...Convicts

31.07.2026

ORDER ON SENTENCE

1. This order shall decide the quantum of sentence of convicts Mohd. Tahir Hussain, Nazim, Kasim, Anas and Javed.

2. By the judgment dated 13.07.2026, the above named convicts had been held guilty and convicted for offences punishable u/s 188 IPC, u/s 153A r/w section 149 IPC, section 147 r/w section 149 IPC, section 148 r/w section 149 IPC, section 365 r/w section 149 IPC and section 302 r/w section 149 IPC.

The arguments at bar

3. Sh. Madhukar Pandey, Ld. SPP has contended that the offences committed by the convicts are extremely heinous, cruel, and brutal. During the North-East Delhi riots, the convicts were part of a violent mob armed with deadly weapons, including knives and heavy cutting weapons. This mob surrounded Ankit Sharma, dragged him towards Chand Bagh Pulia, mercilessly attacked him and inflicted 51

injuries upon him. Seven of these injuries were individually and collectively sufficient to cause death, 18 were caused by sharp-edged weapons, and one injury was caused by a heavy cutting weapon. The use of heavy cutting weapon reflects preplanning. This savage, extremely brutal, grotesque, diabolical, revolting, and dastardly murder aroused extreme indignation and had shaken the collective conscience of the community. The murder was a part of a larger conspiracy to spread terror and disturb communal harmony during the February 2020 North-East Delhi riots.

3.1 He argued that even if it was not possible to identify which convict caused the fatal injury, it does not reduce their criminal liability. The principle of constructive liability under Section 149 of the Indian Penal Code extends even to the question of imposition of the highest sentence. The manner in which the offence was committed is itself an aggravating circumstance.

3.2 Placing reliance on the judgment of **Dhananjay Chatterjee v. State of W.B. (1994) 2 SCC 220**, he has argued that the Hon'ble Supreme Court had held that the sentence must depend upon the atrocity of the crime, the conduct of the offender and the helpless condition of the victim. The Court further held that punishment must be such as to reflect society's abhorrence of the crime. This case also had shocked the conscience of society. A young IB officer was brutally murdered by a violent mob and his body was thrown into a drain. In

Machhi Singh v. State of Punjab (1983) 3 SCC 47 also, the Supreme Court held that where the collective conscience of society is deeply shocked, the case may fall within the category of the rarest of rare cases warranting the death penalty.

3.3 He has further been contended that the offence was committed against the victim on account of his community. Such crimes are not merely offences against an individual but strike at the very fabric of a secular and orderly society. In this regard, reliance has been placed on the judgment of **Krishna Mochi and Others v. State of Bihar, AIR 2002 SC 1965.**

3.4 It has further been contended that the murder was not committed in the heat of the moment or due to sudden provocation. It was deliberate, planned, and carried out in furtherance of the common object of the unlawful assembly. In the case of **Purushottam Dashrath Borate Vs. State of Maharashtra (2015) 6 SCC 652**, the Hon'ble Supreme Court held that where a crime is committed in a deliberate, cold-blooded and pre-planned manner without any provocation, the balance in sentencing tilts heavily towards the extreme punishment.

3.5 He has further contended that offences of the present nature require a strong deterrent response. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in **Sevaka Perumal Vs. State of T.N. (1991) 3 SCC 471.** That the punishment awarded should be proportionate to the seriousness and brutality of the offence.

In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in Shailesh Jasvantbhai v. State of Gujarat (2006) 2 SCC 359.

3.6 Ld. SPP has contended that convict Tahir Hussain was a Municipal Councillor who had misused his position of power and public trust. Instead of maintaining peace, he encouraged and facilitated the unlawful assembly. Being the part of the mob of rioters, he was actively aiding, facilitating, and advancing the violent and deadly object of the mob and was instrumental in the brutal murder of Ankit Sharma. He actively supported and led the violent mob and played an important role in the murder of Ankit Sharma.

3.7 It has further been contended that convicts Nazim, Kasim, Javed and Anas had actively participated in the mob that forcibly abducted the unarmed and defenseless Ankit Sharma and had taken part in his brutal murder. Convict Nazim was specifically seen carrying and wielding a knife during the occurrence. The convicts, acting as a part of an unlawful assembly, demonstrated a depraved and bloodthirsty mindset.

3.8 He has further asserted that there exist no attenuating or mitigating circumstances in favour of the convicts. Convicts have shown no remorse during the investigation or trial. The offence was not committed under pressure or sudden provocation but was part of well orchestrated communal violence.

3.9 It has thus been contended that there are no mitigating circumstances in favour of the convicts and hence, it is prayed that the convicts be sentenced to maximum punishment for offences they have been convicted. He has therefore, demanded death sentence for convicts for the offence punishable u/s 302 r/w section 149 IPC and maximum punishment for other offences.

4. Sh. Rajiv Mohan, Ms. Tara Narula and Ms. Shivangi Sharma, ld. counsels for convict Mohd. Tahir Hussain have contended that convict Tahir Hussain was also charged for offences u/s 505 IPC, u/s 120B IPC, u/s 109 IPC and 114 IPC. He has however been acquitted of these offences. This reflects that the convict had not instigated or abetted the commission of this offence and furthermore, no direct role in the commission of the offence could be attributed or proved against this convict. On the contrary, the acquittal of convict Tahir Hussain and other convicts u/s 120B IPC proves that the prosecution has not proved any pre-planned concert to murder Ankit Sharma, or for rioting, arson etc. It is contended that none of the convicts had been shown to be directly involved in the killing of Ankit Sharma and they had been convicted for being vicariously liable for the murder of Ankit Sharma. No overt act or weapon is proved against the convicts.

4.1 It is further contended that for the offence u/s 302 IPC, there are only two punishments that are provided and these are, death

or imprisonment for life with fine. It has been well settled that for the offence u/s 302 IPC, punishment of imprisonment for life is the rule and the death sentence is an exception. Death sentence can only be awarded in rarest of the rare cases and where the court is of the opinion that the alternative option of life imprisonment is unquestionably foreclosed. Reliance has been placed on **Bachan Singh v. State of Punjab (1980) 2 SCC 684 : 1980 SCC (Cri) 580.** It is further contended that the brutality of crime alone had never been found to be sufficient consideration for sentencing. The court has to weigh both the crime and criminal, and death penalty can only be imposed where the mitigating circumstances of the criminal wholly outweigh the possibility of reformation and the State shows that there are no chances of the convict being reformed.

4.2 It has further been contended that there was no specific murderous disposition on the part of the convict. On the contrary, record has reflected that the convict had repeatedly made calls to PCR and also to ACP K.P Singh seeking police intervention and protection. Therefore as a person who was pleading the police to restore order, he cannot be said to be beyond reformation. To buttress their arguments, Id. counsels have placed reliance upon the following judgments:

(1) State v. Ravi Kapoor & Anr, 2018 SCC OnLine Del 6400, (2) Manoj & Ors. v. State of Madhya Pradesh, (2023) 2 SCC 353; (3) Gurvail Singh @ Gala & Anr. v. State of Punjab (2013) 2 SCC 713,

(4) **Digamber v. State of Maharashtra**, (2023) SCC OnLine SC 531, (5) **Mofil Khan & Anr. v. State of Jharkhand**, (2021) 20 SCC 162, (6) **Rajender Prahlad Rao Wasnik v. State of Maharashtra** (2019) 12 SCC 460 and (7) **Mohd. Mannan @ Abdul Mannan v. State of Bihar** (2019) 16 SCC 584.

4.3 They have separately filed a memorandum of mitigating circumstances in favour of convict Mohd. Tahir Hussain. It is submitted that this is not a case of a murder of public servant on duty because it is not the claim of the prosecution that at the time of incident, the deceased was on duty. Further in the light of judgment of **Manoj (supra)**, following mitigating circumstances have been detailed in this memorandum:-

(i) The convict's family consists of his wife, three children and aged parents. He was the sole bread earner and his wife is a home maker, who is suffering from various ailments such as thyroid, high sugar and has also been advised to undergo hysterectomy. After the incarceration of the convict, she is raising her children on her own. The parents of the convict are old aged and both of them are suffering from ailments. His children too have suffered due to his incarceration and negative media publicity which impacted their social life. The main source of the family's earning is the rental income from the shops situated in building no. E-7, Main Karawal Nagar Road, Delhi which is also the residence of the family. This property however has been provisionally

attached by the Enforcement Directorate.

(ii) The convict is aged 49 years and is suffering from multiple ailments. He has supra umbilical hernia for which he required a surgery. The court had ordered the said surgery to be conducted but due to ongoing final arguments in this case, he chose to postpone the surgery. He has cataract in his right eye and has already had cataract surgery for the left eye. He has dental issues for which he has been recommended treatment. He is suffering from voiding lower urinary tract symptoms and burning micturition. He has been in custody for six and a half years without being on bail for a single day which has taken toll on his mental health.

(iii) He was a former councillor of Nehru Vihar Ward and as such was an honest, hard working and dutiful servant who dedicated himself to public work and improving the living conditions of the people in his constituency. Examples of some such works are given in the memorandum and photographs from Facebook etc. are attached as a proof thereof.

(iv) The convict had completed his education till 12th standard but due to family responsibilities, he could not study further. He is now willing to pursue higher education and is planning to enroll in BA Program provided in jail.

(v) He does not have any criminal antecedents. His conduct during custody was satisfactory and no disciplinary action was ever initiated

against him.

(vi) He has been also roped in FIR No. 52/15 PS Karawal Nagar wherein he was acquitted by the court on 13.04.2022.

4.4 In the light of these mitigating circumstances, it is contended by ld. counsels for convict Tahir Hussain that he is a man with deep roots in the society; there is no evidence or apprehension to show that he would commit criminal acts or violence or that he is beyond reformation and rehabilitation. It was for the State to demonstrate the impossibility of his reformation which the State has failed to do. It is therefore, prayed that u/s 302 r/w section 149 IPC, the convict may be sentenced to imprisonment for life with a moderate fine without any direction curtailing remission, commutation or set off and impose sentences on remaining counts proportionate to convict's purely vicarious role.

5. Ld. counsels for convicts Nazim, Kasim, Anas and Javed had submitted that for the general proposition of law on sentencing, they were adopting the arguments advanced on behalf of convict Tahir Hussain.

6. On behalf of convicts Nazim and Kasim, Sh. Abdul Gaffar, ld. counsel for convicts has contended that the prosecution has emphasized on the fact that the deceased was helpless and defenceless and was attacked without any provocation. However, the evidence on record of the witnesses, especially PW19, reflects that the deceased

himself walked towards the mob which amounted to a provocation and was armed with a danda and thus, Id. SPP was not correct in arguing that the victim was defenceless. To bring the case of the convicts in the rarest of rare category, it was for the State to show that they cannot be reformed but State apart from rhetorical arguments has not brought any material to establish this fact. It is further contended that no weapon has been proved to have been used by any of the convicts. It is evident that there was no pre-planning and no individual role in the assault upon the deceased has been attributed or proved against any of the convicts. Furthermore, throughout the trial they had been in custody and their conduct in jail has been satisfactory. The convicts have no previous criminal antecedents. He has therefore contended that there are mitigating circumstances in favour of the convicts which reflect that the convicts can be reformed and this case does not call for the maximum sentence provided under law.

7. On behalf of convict Anas, Sh. Salim Malik, Id. counsel has contended that there are mitigating circumstances in favour of the convict. The past and present conduct of the convict has been satisfactory. He has no criminal antecedents. He had already spent 4 ½ years in jail in this case and during the custody also, no complaints were received against him. Even after being released on bail, he was not involved in any criminal activities or violence. He has further contended that no particular role or activity has been assigned to the

convict and conviction is only with the help of section 149 IPC. These circumstances reflect that there are high chances of the convict being reformed and therefore, this is not the rarest of the rare cases calling for the highest penalty in law. On the contrary, his conduct during the trial, the fact that he has clean antecedents and being sole bread earner of the family are the mitigating factors which are calling for the lightest possible punishment.

8. Sh. Mohd. Dilshad, Id. counsel for convict Javed has contended that he is a young man of 36 years of age with no previous criminal involvements. He has a brother who is paralyzed and is dependent upon him. He is the sole bread earner of the family. He has further contended that convict had remained in jail for 4 ½ years and his conduct was satisfactory. After being released on bail, he was not involved in any act of violence and all these factors point towards the reformatory tendencies of the convict. He has contended that these mitigating factors coupled with the fact that no specific role was assigned to him in the commission of the crime and he has been merely been convicted because he was a part of the assembly call for the most lenient sentence to be imposed.

9. In rebuttal, Id. SPP has contended that there are no mitigating circumstances in favour of any of the convicts. He has contended that the crime, the manner in which it was committed and the brutality of this crime show that these convicts are beyond

redemption. He has further contended that the fact that convict Mohd. Tahir Hussain was in judicial custody for a long time cannot be considered as a mitigating circumstance at this stage but can only be so considered at a later stage during appeal. He is not denying that convict Tahir Hussain was a municipal councillor but that being the case, it was his duty to save the victim rather than being a part of the murderous mob and as such, having been elected a municipal councillor is no mitigating circumstance. He has further contended that the contention on behalf of Tahir Hussain that he wants to opt for higher studies is just a ploy to reflect that he had some reformative tendencies. However, if he intended to do so he could have done so during the past six years when he was in custody.

9.1 He has further contended that the mere fact that deceased walked towards the crowd or was carrying a danda did not give any license to the convicts to ruthlessly kill the deceased. That the family circumstances of none of these convicts could be considered as a mitigating circumstance because while committing the crime, they themselves did not think of their families. This can never be considered as mitigating circumstance because all those who had been sent to gallows in past, had families. He has contended that these convicts are not entitled to the mercy of the court, as these who seek mercy had not shown any mercy to the deceased.

Socioeconomic Status Reports

10. The socioeconomic status reports of the convicts were called for, and have been filed by the State.

10.1 In the socioeconomic report of convict Anas, it is submitted that this convict is aged about 31 years and is unmarried. His parents have passed away. He has one younger brother and two sisters and they all are married. Convict Anas is illiterate and prior to his arrest, he was earning his livelihood by selling fruits on a handcart or by running rickshaw/ E-rickshaw in Meerut U.P. He does not own any movable or immovable property in his name. Convict belongs to a financially weaker background and has no independent source of income or property.

10.2 In the socioeconomic report of convict Kasim, it is submitted that the convict is aged about 36 years. For last 15-16 years, the family has been residing in H. No. 1378, Gali No. 15, Main Nala Road, New Mustafabad, Delhi. The convict has eight siblings i.e. four brothers and four sisters. All of his siblings are married. Convict was married to one Reshma and after his arrest, his wife started residing in her parental house. Convict Kasim is illiterate and prior to his arrest, he was earning his livelihood by working as a labourer and by working on a small meat shop. The convict has no immovable or movable property in his name and he has never maintained any bank account. However, as per the records of House Tax Department of Nagar Palika Parishad, Sambhal, the names of Mohd. Nazim, Mohd. Asim, Mohd.

Kasim and Mohd. Zuher are jointly registered for H. No. 214/199. The financial condition of the convict's family is modest and they are primarily dependent on daily wage work. The convict belongs to a economically weaker background and has no independent source of income or property.

10.3 In the socioeconomic report of convict Nazim, it is submitted that the convict is aged about 45 years. For last 15-16 years, his family has been residing in H. No. 1378, Gali No. 15, Main Nala Road, New Mustafabad, Delhi. Convict has eight siblings i.e. four brothers and four sisters. All of his siblings are married. From his first marriage, the convict has two daughters aged about 19 years and 17 years from his first marriage and from his second marriage with Sumaiya, he has one daughter aged about 06 years. His wife has been residing in an rented accommodation and is earning her livelihood by stitching clothes. Convict Nazim is illiterate and prior to his arrest, he was earning his livelihood by working as a labourer and by working on a small meat shop. The convict has no immovable or movable property in his name and he has never maintained any bank account. However, as per the records of House Tax Department of Nagar Palika Parishad, Sambhal, the names of Mohd. Nazim, Mohd. Asim, Mohd. Kasim and Mohd. Zuher are jointly registered for H. No. 214/199. The financial condition of the convict's family is modest and they are primarily dependent on daily wage work. The convict belongs to a economically

weaker background and has no independent source of income or property.

10.4 In the socioeconomic report of convict Javed, it is submitted that convict is aged about 36 years. Convict originally belongs to Distt. Bulandshahar, U.P where his family used to live in a rented accommodation. For last 10-12 years, his family has been residing in Delhi in a rented accommodation. The convict is married to one Anjum and has four children i.e. one daughter Shireen aged about 12 years and three sons namely Faizan aged about 13 years, Ayan aged about 12 years and Aris aged about 6 years. The family of convict is presently residing in a rented house. Convict has studied upto 4th or 5th class. Prior to his arrest, convict was earning his livelihood by selling fruits. This was the sole source of his income. The financial condition of the family of convict is weak. As per the inquiry, convict does not own any movable or immovable property in his name. Convict has only one bank account bearing no. 27890100035858 in Bank of Baroda, Bhajanpura Branch. However, the said account is dormant. As per the PAN number of convict, no property was found registered in his name. As per the statement of wife of the convict, the daughter of convict stitches clothes and his son sells fruit and that is how, they managed their household expenses. The financial condition of convict is modest and primarily dependent upon daily wage work.

10.5 In the socioeconomic report of convict Mohd. Tahir

Hussain, it is submitted that the convict is aged around 49 years and he originally belongs to Distt. Amroha, U.P. The convict has five brothers and five sisters. They all are married and are living separately with their families. In the year 2014, convict started living in H. no. E-7, Main Karawal Nagar Road, Khajuri Khas Delhi. This property was jointly in the name of convict Mohd. Tahir and his wife Shama Anjum and the total area of the property is 1080 sq. yards. No other property was found registered in the name of convict. In the year 2017, he was elected as a Municipal Councillor from Nehru Vihar, Delhi. Convict has three children i.e. two sons and one daughter. Convict has studied upto class XII. Prior to his arrest, convict was engaged in the business of wooden furniture/ carpentry. Convict's parents are residing with Shah Alam (brother of convict). It is further submitted that during verification, it was found that some portions of the property no. E-7 have been let out on rent and the rental income, which the family is getting, is Rs.1.95 lacs per month. The convict has three companies. One is Essence Cellcom Network and the estimated value of the assets of this company is Rs.10 lacs. The second is Show Effect Worldwide Private Ltd. and since the arrest of convict, this company has remained non functional. The third one is Show Effect Advertisement Pvt. Ltd. which is the sister concern of Show Effect Worldwide Private Ltd. The combined estimated value of these concerns is Rs.25 lacs. The convict has two bank accounts with Bank of Baroda, Bhajanpura Branch and

both the accounts are dormant accounts. No vehicles or no other movable or immovable properties were taken in the name of convict or his wife. His wife is a home maker.

The conduct reports of the convicts from the Jail Authorities.

11. As per the conduct report of convict Tahir Hussain no punishment ticket was issued to the convict and overall conduct of convict Tahir Hussain, during the custody, judicial custody was satisfactory.

11.1 In the conduct report of convict Nazim, it is submitted that the conduct of the convict Nazim, as per the record, has been found to be satisfactory.

11.2 As per conduct report of convict Kasim, he has been issued 3 punishment tickets. The first one was issued on 05.05.2022 for misbehaving and threatening the jail officer and for self inflicted injuries. The second one was issued on 05.04.2024 as during search, tobacco was recovered from his possession. The last punishment was given to him on 20.04.2024 when one surgical blade was recovered from his possession.

Findings

12. It is now well settled that, while awarding sentence, the Court is required to consider both the aggravating and the mitigating circumstances so as to arrive at a just sentence befitting not only the crime but also the criminal. At the same time, there is no mathematical

formula for determining the sentence to be imposed upon a convict. The superior courts have, however, laid down broad principles to guide the exercise of sentencing discretion, and it is within the contours of those principles that the sentencing court is required to evaluate each case on its own facts and circumstances.

12.1 In the present case, both the prosecution and the defence have, concentrated their submissions on the sentence to be awarded for the offence punishable under Section 302 IPC, as it carries the gravest of consequences. While the prosecution has contended that the present case falls within the category of the "rarest of rare" cases warranting the imposition of the death penalty, the defence has argued to the contrary.

12.2 Since *Bachan Singh*(supra), from Machi singh(supra) up to Manoj(supra), the legal principles regulating the imposition of capital punishment have consistently been evolved and developed by the Hon'ble Apex Court.

12.3 In *Machi Singh* (supra), the Hon'ble Supreme Court laid down the following guidelines:-

“38. In this background the guidelines indicated in *Bachan Singh case* [Supra] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh case* [Supra] :

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the “offender” also require to be taken into consideration along with the circumstances of the “crime”.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.....”

12.4 Thus, it was laid down that for arriving at the conclusion as to whether a case falls within the category of the "rarest of rare" cases, both the crime and the criminal are required to be taken into account. This principle, after considering the entire gamut of law relating to capital punishment, was further elaborated by the Hon'ble

Supreme Court in *Manoj (Supra)*. It was held:

226. In *Shankar Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546, this Court developed yet another framework of the “crime test”, criminal test” and “rarest of rare test” (which was held to be distinct from the “balance test” that was discouraged in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498, and subsequently, in *Sangeet v. State of Haryana*, (2013) 2 SCC 452 as well).

“52. In my considered view, the tests that we have to apply, while awarding death sentence are “crime test”, “criminal test” and the “R-R test” and not the “balancing test”. To award death sentence, the “crime test” has to be fully satisfied, that is, 100% and “criminal test” 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the “criminal test” may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is “society-centric” and not “Judge-centric”, that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges.”

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Practical guidelines to collect mitigating circumstances

248. There is urgent need to ensure that mitigating circumstances

are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

249. To do this, the trial court must elicit information from the accused and the State, both. The State, must—for an offence carrying capital punishment—at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] . Even for the other factors of (3) and (4)—an onus placed squarely on the State—conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison i.e. to evaluate the progress of the accused towards reformation, achieved during the incarceration period

250. Next, the State, must in a *time-bound manner*, collect *additional* information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

- (a) Age
- (b) Early family background (siblings, protection of parents, any history of violence or neglect)
- (c) Present family background (surviving family members, whether married, has children, etc.)
- (d) Type and level of education
- (e) Socio-economic background (including conditions of poverty or deprivation, if any)
- (f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)
- (g) Income and the kind of employment (whether none, or temporary or permanent, etc.);
- (h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

251. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e. Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be — *a fresh report* (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will *further* evidence the reformatory progress, and reveal post-conviction mental illness, if any.

252. It is pertinent to point out that this Court in *Anil v. State of Maharashtra* [*Anil v. State of Maharashtra*, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266] has in fact directed criminal courts to call for additional material : (SCC p. 86, para 33)

“33. ... Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. *We, therefore, direct that the criminal courts, while dealing with the offences like Section 302IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.*” (emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.

12.5 Thus, the contentions at bar are required to be weighed in the light of the aforesaid legal principles to assess the mitigating and aggravating circumstances of the crime and the convicts.

12.6 **The Crime:** The present crime was committed during the communal violence that erupted in the wake of the protests against CAA/NRC. The manner in which it was committed was of the utmost brutality. The victim was sucked in by the murderous mob, baying for blood, solely on account of his religion. The assault was so fierce, unrelenting, and from such close quarters that even in death, the body did not immediately slump to the ground. The savagery, however, did not end there. The body of the victim was strapped like an animal and dragged to the Chand Bagh Pulia. As if the hatred had still not been satiated, the dead body was thereafter thrown into the *nala*. Therefore, the barbarity with which this horrendous murder was committed is nauseatingly sickening. This therefore, is an aggravating circumstance of immense magnitude. The crime test, thus tilts the present case towards the category of the "rarest of rare" cases.

12.7 **The Convicts:** Every one of the convicts has pleaded that the fact that they have families dependent upon them, and that they are the sole breadwinners of their respective families, ought to be treated

as a mitigating circumstance. Generally, it ought to be considered a mitigating circumstance. However, in the facts of the present case, the monstrosity of the crime committed outweighs this mitigating circumstance. For the same reason, the physical ailments of the convict Mohd. Tahir Hussain, or of his wife and parents, cannot outbalance the gravity of the crime.

12.8 However, the final test that law requires me to undertake before I conclude that this case invites capital punishment is, whether the convicts are beyond redemption, there being no chance of reformation?

12.9 It is now firmly established in our criminal jurisprudence that death is the penalty of the last resort. It is only when the State establishes that the convict has travelled so far down the road to perdition that there is no coming back, and that he has become a menace of such magnitude that the society must be rid of him, that capital punishment is to be resorted to.

12.10 It is, therefore, incumbent upon the prosecution to establish that the convicts are beyond the possibility of reformation and rehabilitation, thus removing from consideration the option of life imprisonment.

12.11 The State has not brought anything on record to establish that any of the convicts has a violent disposition or a propensity towards crime. It has also not been shown that any of the convicts had

previously been involved in any violent crime. The conduct of the convicts Tahir Hussain, Kasim and Nazim, while in custody, except for minor infractions on the part of convict Kasim, has been entirely satisfactory. This indicates that they can be disciplined and made to follow a rule-based order. Convicts Javed and Anas have not been reported to have been involved in any criminal activity after their release on bail in the present case. This is indicative of the fact that they, in general, do not have a violent disposition or a propensity towards crime.

12.12 This brings me to the role of the convicts in the commission of the crime. No specific act, during the commission of this murder, had been attributed to, or proved against any of the convicts. No doubt, as argued by Id. SPP, there is no bar to the handing down of the death penalty to a convict who has been, vicariously and with the aid of sec.149 IPC, found guilty of murder. However, in my considered opinion, in such cases before a life is ordered to be extinguished by a judicial decree, something beyond the membership of an unlawful assembly, though not strictly a direct participation in the fatal assault, is required to be proved.

12.13 An effort in this direction was made by the Ld. SPP when he argued that the use of a heavy cutting weapon upon the victim was indicative of a pre-planned and cold-blooded intent. However, the time for drawing inferences from mere indications is long past. We are now

beyond the stage of suspicion or possibility and firmly within the realm of facts established by evidence. At the stage of sentencing, particularly where the death penalty is under consideration, the Court can proceed only on those facts which have been proved during the trial and not on possibilities, however persuasive they may appear.

12.14 A specific role was once again sought to be assigned to convict Tahir Hussain by the Ld. SPP when he argued that Tahir Hussain instigated, facilitated, and led the unlawful assembly by using his own house as an operational base for launching attacks with stones, bricks, petrol bombs, and acid bombs upon citizens as well as law enforcement agencies. However, it must be recalled that the prosecution has failed to prove the allegations that Tahir Hussain aided, abetted, instigated, or led the unlawful assembly. Once such findings have been returned on the basis of the evidence on record, any submission contrary thereto deserves to be rejected outright. It must also be kept in mind that the allegation of convict Tahir Hussain using his house as a launchpad or base for the riots was neither a part of the charges framed against him in this case, nor was it specifically sought to be proved through evidence.

12.15 Hence, the absence of any role being attributed to or proved against the convicts is a huge mitigation.

12.16 At the same time, it must be taken note of that Convicts Javed, Kasim, and Nazim are illiterate, while Convict Anas has studied

up to Class IV. Ordinarily, lack of education should not be treated as a mitigating circumstance, as there is no established correlation between education and the commission of crime. However, the present offence was committed at a time when vested interests, by spreading misinformation, had whipped up a religious frenzy. The convicts, particularly Javed, Anas, Kasim, and Nazim, being uneducated, would have been more gullible and susceptible to such propaganda. Persons with little or no education are generally less equipped to critically evaluate misinformation, verify the truthfulness of inflammatory claims, or resist manipulation by those who seek to exploit communal tensions. I am, therefore, of the view that the educational background of the convicts, particularly their susceptibility to manipulation in an atmosphere vitiated by misinformation and communal frenzy, constitutes a relevant mitigating circumstance while determining the appropriate sentence.

12.17 I accordingly find that mitigating circumstances coupled with the fact that the convicts have not been found beyond reformation, balance the scales. Thus, I find myself unable to agree with Id. SPP that the convicts are beyond reformation, or have such fiendish character that their continued existence, even in prison, will be a menace to society.

12.18 However, for the other offences the convicts have been found guilty of, they must face the full force of the law. It is because

these crimes were committed in complete disdain for the law and utter disregard for life and property; unlike the offence of murder, there is no special circumstances test required to be undertaken before the maximum sentence provided in law can be inflicted.

The Sentence

13. In view of the discussion earlier, I am of the considered opinion that ends of justice will be served if the convicts are sentenced as under:

1. Convict Tahir Hussain

U/s 188 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of six months and a fine of Rs.1000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one day.

U/s 147 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.20,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 20 days.

U/s 148 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.25,000/- is also imposed upon the

convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

U/s 153A r/w section 149 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of three years and a fine of Rs.25000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

U/s 365 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.50,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 50 days.

U/s 302 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for life and a fine of Rs.5 lacs is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one year.

2.Convict Nazim

U/s 188 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of six months and a fine of Rs.1000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one day.

U/s 147 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.4,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 4 days.

U/s 148 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.5,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 153A r/w section 149 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of three years and a fine of Rs.5000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 365 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.10,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple

imprisonment for a period of 10 days.

U/s 302 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for life and a fine of Rs.25,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

3.Convict Kasim

U/s 188 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of six months and a fine of Rs.1000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one day.

U/s 147 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.4,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 4 days.

U/s 148 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.5,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 153A r/w section 149 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of three years and a fine of Rs.5000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 365 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.10,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 10 days.

U/s 302 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for life and a fine of Rs.25,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

4.Convict Javed

U/s 188 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of six months and a fine of Rs.1000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one day.

U/s 147 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.4,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 4 days.

U/s 148 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.5,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 153A r/w section 149 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of three years and a fine of Rs.5000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 365 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.10,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 10 days.

U/s 302 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for life and

a fine of Rs.25,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

5. Convict Anas

U/s 188 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of six months and a fine of Rs.1000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one day.

U/s 147 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.4,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 4 days.

U/s 148 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.5,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 153A r/w section 149 IPC

(a) The convict is sentenced to undergo rigorous imprisonment of three years and a fine of Rs.5000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 5 days.

U/s 365 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for a period of seven years and a fine of Rs.10,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of 10 days.

U/s 302 IPC r/w section 149 IPC

(a) Convict is sentenced to undergo rigorous imprisonment for life and a fine of Rs.25,000/- is also imposed upon the convict.

(b) In default of payment of fine, convict shall undergo simple imprisonment for a period of one month.

All the sentences of all the convicts shall run concurrently. Benefit of section 428 Cr.P.C/ 468 BNSS shall be given to the convicts. Out of aforesaid fine imposed upon the convicts, Rs.5 lacs shall be paid as compensation to the family of the victim.

14. Fine not paid by the convicts. Copy of order on sentence be given to the convicts free of cost. File be consigned to record room.

Announced in open court
today on 31.07.2026.

(Parveen Singh)
ASJ-03, North East District,
Karkardooma Court, Delhi.

