

IN THE COURT OF SHRI SANDEEP YADAV
ADDL. SESSIONS JUDGE-02 : SOUTH EAST DISTRICT
SAKET COURT : NEW DELHI

SC No. 212/18

FIR No. 208/08

U/s.186/353/333/307/302/34/174A/IPC

& 27 Arms Act.

PS: Jamia Nagar

State

Versus

Ariz Khan @ Junaid @ Anna @ Salim

S/o. Late Zafar Alam

R/o. Mohalla Bazbahadur

Azamgarh City, PS Kotwali

Azamgarh, U.P.

.... Convict

ORDER ON SENTENCE

15.03.2021

At 1 PM.

Present: Mr. A.T. Ansari, Addl. P.P. for State.

Mr. M.S. Khan with Mr. Prashant Prakash and Ms. Qausar

Khan, counsels for convict.

IO/Inspector Digvijay.

ASI Ashok, Pairvi Officer.

FIR No. 208/08

St. Vs. Ariz Khan @ Junaid @ Salim @ Anna

1/22

Convict produced from j/c.

IO Inspector Digvijay has filed reply report in terms order dated 08.03.2021. Copy has been supplied to ld. counsel for convict.

Arguments on quantum of sentence heard.

Order on sentence will be pronounced today at 4 PM.

(Sandeep Yadav)

ASJ-02/South East District

Saket Court/New Delhi /15.03.2021

At 4 PM.

Present: Mr. A.T. Ansari, Addl. P.P. for State.

Mr. M.S. Khan with Mr. Prashant Prakash and Ms. Qausar Khan, counsels for convict.

IO/Inspector Digvijay.

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Convict produced from j/c.

1. Convict Ariz Khan @ Junaid @ Anna @ Salim has been held guilty for the offences under sections U/s.186/353/333/307/302/34/174A/IPC & 27 Arms Act vide judgment dated 08.03.2021. Arguments on quantum of sentence on behalf of convict as well as prosecution have been heard.

2. Mr. M.S. Khan, ld. counsel for convict, at the outset submitted that Md. Shahzad whose role is identical with the role assigned to convict Ariz Khan @ Junaid @ Anna @ Salim was awarded life imprisonment and applying the principle of parity, convict Ariz Khan @ Junaid @ Anna @ Salim be sentenced to imprisonment for life. Mr. M.S. Khan submitted that evidence and circumstances adduced against convict Ariz Khan @ Junaid @ Anna @ Salim and against Md. Shahzad are same. It was further submitted that offence in the present case was not committed in pre-mediated manner and the incident happened all of a sudden. It was further submitted that age of convict was 24 years at the time of incident. Mr. M.S. Khan further submitted that it is not crystal clear who fired and killed deceased Inspector Mohan Chand Sharma. Mr. M.S. Khan reiterated that there was no conspiracy and planning and hence, crime was not committed in pre-mediated manner. Mr. M.S. Khan submitted that in these circumstances a lenient view may be taken and convict be punished with life imprisonment. Mr. M.S.Khan relied upon *Ajmer Singh Vs. State of Haryana 2010 (2) SCR 785* wherein it was held that *principle of parity in criminal case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to the co-accused.*

3. Mr. A.T. Ansari, Id. Addl. Public Prosecutor for State submitted that it not an ordinary murder, rather it is a murder of defender of justice. Mr. A.T. Ansari submitted that a police official was killed while discharging his lawful duties. It was further submitted that convict and his accomplices were carrying deadly weapons which clearly suggest that they were ready to kill anyone. It was submitted that gun powder swab at the hand of deceased militant collected by doctor in the hospital were found to have gun powder residue which establishes that they fired at the police officials. Mr. A.T. Ansari further submitted that the collective conscious of the society was shocked because of the crime committed in this case. Reference in this regard was made to *Devender Pal Singh Bhullar Vs. State of NCT of Delhi AIR 2013 SC 1975*. Mr. A.T. Ansari further submitted that this incident has instilled fear in the mind of common man. Giving criminal antecedents of the convict, Mr. A.T. Ansari submitted that convict is involved in serial blasts cases not only in Delhi but also in Jaipur, Ahemdabad and UP in which several innocent people were killed and this according to Mr. A.T. Ansari shows remorselessness of the convict. Describing the impact of crime on the family of deceased, Mr. A.T. Ansari submitted that family of victim is still under shock and trauma. It was further submitted that one of the injured police officials namely HC Balwant has

lost his two fingers. It was submitted that perception of the society is required to be taken into consideration while awarding punishment. Mr. A.T.Ansari, thus, submitted that convict deserves maximum punishment provided under the law i.e. death penalty. Mr. A.T.Ansari during the course of arguments relied upon *Ajit Singh Harnam Singh Gujral Vs. State of Maharashtra (2011) 14 SCC* and *Bachan Singh Vs. State of Punjab, AIR 1980 SC 898*.

4. State has filed an appeal before Hon'ble Delhi High Court against the order on sentence dated 30.07.2013 praying for enhancement of life imprisonment awarded to Md. Shahzad to death sentence as mentioned in the order dated 09.08.2018 passed by Hon'ble Delhi High Court in Criminal Appeal No. 1196/2013. Thus, order/judgment whereby Md. Shahzad was sentenced to life imprisonment is not final and has been challenged before competent court of law. Hence, convict Ariz Khan @ Junaid @ Anna @ Salim cannot seek any parity with Md. Shahzad.
5. The other contention of convict that it is not clear as to who killed deceased Inspector Mohan Chand Sharma pertains to the merits of the case which has already been decided and cannot be raised while arguing on the quantum of sentence.

6. Section 302 IPC provides that *whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.* It has been held in catina of judgments by Hon'ble Supreme Court that death penalty can be awarded only if a case falls within the category of Rarest of Rare Case.

7. **Rule 1 Chapter 19 Volume III of Delhi High Court Rules** gives some guidelines in determining the sentence to the offenders. Same are being re-produced herein as under :

“ The award of suitable sentence depends on a variety of considerations – The determination of appropriate punishment after the conviction of an offender is often a question of great difficulty and always requires careful consideration. The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court has to determine in each case a sentence suited to the offence and the offender. The maximum punishment prescribed by the law for any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum. The measure of punishment in any particular instance depends upon a variety of considerations such as the motive for the crime, its gravity, the character of the offender, his age, antecedents and other extenuating or aggravating circumstance, such as sudden temptation, previous

convictions, and so forth, which have all to be carefully weighed by the Court in passing the sentence.”

8. In **Bachan Singh Vs. State of Punjab AIR 1980 SC 898**, Hon'ble Supreme Court of India laid down the aggravating as well as mitigating circumstances, to be weighed by the Court, while determining as to whether case under consideration requires extreme penalty of death. Same are being re-produced herein as under :

Aggravating Circumstances :-

- (a) if the murder has been committed after previous planning and involves extreme brutality, or
- (b) if the murder involves exceptional depravity, or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed: -
 - (i) while such member or public servant was on duty, or
 - (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant - whether at the time of murder he was such member of public servant, as the case may be, or had ceased to be such member or public servant, or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a police officer after demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.”

Mitigating Circumstances :-

(i) that the offence was committed under the influence of extreme mental or emotional disturbance.

(ii) the age of the accused. If the accused is young or old, he shall not be sentenced to death,

(iii) the probability that the accused would not commit acts of criminal acts of violence as would constitute a continuing threat to society.

(iv) the probability that the accused can be reformed and rehabilitated, the State shall by evidence prove that the accused does not satisfy the conditions (3) & (4) above.

(v) that in the facts and circumstances of the case, the accused believed that he was morally justifying in committing the offence.

(vi) that the accused acted under the duress or domination of another person.

(vii) that the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.”

In this case it was further held in para 207 as under :

“ There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. 'We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society'. Nonetheless, it cannot be over- emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in section 354 (3). Judges should never be a blood-thirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past, Courts have inflicted the extreme penalty with extreme infrequency – a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354 (3), viz, that the person convicted of murder, life imprisonment, is the rule and death sentence an exception. A real and abiding concern

for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

9. Further in **Machhi Singh Vs. State of Punjab (1983) 3 SCC 470**, Hon'ble Supreme Court held that :

"In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it."

It was further observed that :

" When the community feels, that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty **irrespective** of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entrain such a sentiment when the

crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, such as for instance :

(i) **manner** of commission of Murder i.e., when the murder is committed in an extremely **brutal, grotesque, diabolical, revolting** or **dastardly** manner so as to arouse intense and extreme indignation of the community;

(ii) whether the victim is subjected to **inhuman acts of torture** of cruelty in order to bring about his or her death.

10. In light of these judgments it has to be found as to what are the aggravating and mitigating circumstance in the present case.

Mitigating Circumstances:

11. When one looks at the entire record and submissions of Mr M.S.Khan, Id. counsel for convict, one hardly finds any mitigating circumstance. The fact that offence was not committed in pre-meditated manner and in pursuance of a conspiracy will obviously not constitute mitigating circumstance. Age of the convict at the time of commission of crime will also not to be considered as the mitigating circumstance.

Aggravating Circumstances:

12. Deleterious impact of crime on social order and human psyche added to the list of aggravating circumstances. Unbearable miseries inflicted by convict do constitute aggravating circumstance. Nature of offence and manner of committing the crime aroused extreme indignation to the society in this case.

13. Now as per the mandate of law in *Bachan Singh Vs. State of Punjab, AIR 1980 SC 898* it has to be seen as to whether the case falls within the category of rarest of the rare case.

14. It has been proved on record that convict alongwith his accomplices fired at police officials on duty without any provocation. It is pertinent to mention here that the police team led by deceased Inspector Mohan Chand Sharma had gone to the place of occurrence only to nab the persons involved in Delhi blast cases. Police officials had no intention to kill the occupants of the flat. This is clear from the fact that deceased Inspector Mohan Chand Sharma who was leading the police team knocked the door at the flat and disclosed his identity saying "*darwaza kholo police hai*". Some of the members of the advance team were not even carrying arms. Secondly police officials did not fire at Md. Saif who had locked himself inside the bathroom and surrendered before the police officials. It is, therefore, obvious that convict Ariz Khan @ Junaid @ Anna @ Salim alongwith his accomplices fired at police officials without being challenged, instinctively and while doing

so killed one of the raiding police officials namely Inspector Mohan Chand Sharma and fatally injured another police official namely HC Balwant. The fact that convict alongwith his accomplices committed the murder of deceased Inspector Mohan Chand Sharma, a member of police team (Special Cell Delhi Police), would constitute aggravating circumstance as per the dictum of law laid down in Bachan Singh (*supra*) case.

15. It should not be forgotten that deadly weapons like AK-47 and two pistols were retrieved from the flat where the shoot out took place. The defence has not able to clarify as to for which purpose these deadly weapons were kept by the convict and his accomplices in the flat. Considering the nature of devastation that these weapons can cause, it will be safe to conclude that these weapons were kept in the flat with a view to indulge in terrorist and anti social activities.

16. I find substance in the submission of Mr. A.T.Ansari, Id. Public Prosecutor for State that convict Ariz Khan @ Junaid @ Anna @ Salim and his associates were carrying deadly weapons which clearly suggest that they were ready to kill anyone.

17. The offence proved against accused is not an ordinary act but a crime against the State. Convict, while committing offence acted like a dreaded and well trained terrorist who does not deserve any

leniency.

18. The first question that has arisen before the court while deciding the quantum of sentence is as to whether there is any chance of reformation of convict. It has been proved on record that convict after the shoot out managed to escape and run away from the spot. The convict eluded investigating agencies for almost ten years despite coercive process against him. Convict was declared proclaimed offender way back in the year 2009 and was ultimately arrested in 2018. There is no evidence on record that convict during investigation or trial showed any signs of reformation or repentance. Thus, the natural and inescapable conclusion is that there is no chance of reformation of convict.

19. The second question to be decided is as to whether convict continues to be a threat to the society. The abhorrent and brutal act of convict in firing on police party without any provocation itself shows that convict is not only the threat to the society but is also an enemy of the state. Involvement of convict in various blast cases indicated in Ex.PW-54/A not only in Delhi but also in Jaipur, Ahmedabad and U.P. in which hundreds of innocent people were killed and injured further demonstrates that convict continues to be a threat to the society and the nation.

20. Convict on account of his despicable act has forfeited his right to live. After balancing mitigating circumstances against aggravating circumstances, it is concluded that it a rarest of the rare case where convict deserves maximum sentence provided under the law. It is the level of magnitude, decree of brutality, attitude and mindset of wrong doer behind the crime alongwith other factors which makes it a rarest of the rare case. Protection of society and deterring criminal is an avowed object of law and this is required to be achieved by imprisonment of appropriate sentence. The most appropriate sentence for convict like Ariz Khan @ Junaid @ Anna @ Salim will be death penalty. Interest of justice will be met if convict is awarded death penalty.

21. Accordingly, following punishments are awarded to convict Ariz Khan @ Junaid @ Anna @ Salim:

(a) Convict Ariz Khan @ Junaid @ Anna @ Salim is sentenced to death for the offence punishable under section 302 of the Indian Penal Code and fine of Rs.10,00,000/-. Convict Ariz Khan @ Junaid @ Anna @ Salim be hanged by neck till he is dead. In default of payment of fine, convict Ariz Khan @ Junaid @ Anna @ Salim shall undergo simple imprisonment for 6 months (six months).

(b) Convict Ariz Khan @ Junaid @ Anna @ Salim is sentenced to rigorous imprisonment for three months for the offence punishable under section 186 of the Indian Penal Code.

(c) Convict Ariz Khan @ Junaid @ Anna @ Salim is further sentenced to rigorous imprisonment for ten years and fine of Rs. 20,000/- for the offence punishable under section 333 of the Indian Penal Code. In default of payment of fine convict will undergo simple imprisonment for six months.

(d) Convict Ariz Khan @ Junaid @ Anna @ Salim is further sentenced to rigorous imprisonment for two years for the offence punishable under section 353 of the Indian Penal Code.

(e) Convict Ariz Khan @ Junaid @ Anna @ Salim is further sentenced to imprisonment for life and fine of Rs. 20,000/- for the offence punishable under section 307 of the Indian Penal Code. In default of payment of fine convict will undergo simple imprisonment for six months.

(f) Convict Ariz Khan @ Junaid @ Anna @ Salim is further sentenced to simple imprisonment for seven years and fine of Rs. 10,000/- for the offence punishable under section 174A of the Indian Penal Code. In default of payment of fine convict will undergo simple imprisonment for three months.

(g) Convict Ariz Khan @ Junaid @ Anna @ Salim is further sentenced to simple imprisonment for three years and fine of Rs. 50,000/- for the offence punishable under section 27 of Arms Act. In default of payment of fine convict will undergo simple imprisonment for one month.

22. The sentences awarded above under section 186/333/353/307/174A of The Indian Penal Code and Section 27 of Arms Act shall run **consecutively**. Benefit of section 428 Cr.PC is extended to convict wherever applicable.

Compensation to the legal heirs/dependents of deceased Inspector Mohan Chand Sharma.

23. Legal heirs/ dependents of deceased Inspector Mohan Chand Sharma who displayed exemplary courage and valour during the shoot out and laid down his life fighting for security of society and nation deserves to be suitably compensated. At the conclusion of trial victim or dependents of victim should not be lost sight of. In emerging trend of criminal jurisprudence rights and interests of victim and the family of victim needs to be protected and upheld.

24. In *Ankush Shivaji Gaikwad vs. State of Maharashtra* in AIR 2013 SC 2014 decided by Hon'ble Supreme Court, it was held that, “ *While the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have*

the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order Under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can precede an order on sentence to enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family.”

25. In the celebrated judgment of *B.K. Basu Vs. State of West Bengal 1997 1 SCC 416*, it was held that *to repair wrong done and to give judicial redress for legal injury is compensation of judicial conscious.*

26. This Court vide order dated 08.03.2021, directed the Investigating Officer Inspector Digvijay to conduct an inquiry to ascertain the financial condition of convict and his family and assess their capacity to pay compensation. The enquiry to be conducted by Investigating Officer was also directed to focus on the impact of crime,

committed in this case, on the legal heirs/dependents of deceased Inspector Mohan Chand Sharma, so that the Court can arrive at a just conclusion on the question of compensation.

27. Investigating Officer after conducting inquiry has filed the report in terms of order dated 08.03.2021. As per the report of Investigating Officer, mother of the convict is having agricultural land measuring about 1380 square meters in the area of Village Haripur, Tehsil Sagri, Distt. Azamgarh, UP. Report also states that mother of convict is also having agricultural land measuring 5860 square meters in the area of village Naseerpur Fatehpur, Tehsil Sagri, Distt. Azamgarh, UP.

28. Report filed by the Investigating Officer states that victim deceased Inspector Mohan Chand Sharma is survived by his wife, two children and parents. As per the report whole family of the victim suffered mental trauma and mental set back due to the incident in this case. Old father and mother of deceased have gone through severe mental set back as deceased was the only son of his parents. As per the report education of both children of the victim suffered adversely because of the incident in this case. Report further states that family of deceased Inspector Mohan Chand Sharma is still living under mental disturbance due to their safety and fear of any mis-happening. They are unable to live normal life due to their security concerns.

29. No amount of compensation can alleviate the agony, pain and trauma of family members of victim, resulting from the crime committing in this case. However, monetary compensation would provide some solace and would apply balm to the wound of family members of victim.

30. It is clear from the report filed by Investigating Officer that convict Ariz Khan @ Junaid @ Saleem @ Anna is capable to pay compensation to the legal heirs/dependents of victim.

31. In these facts and circumstances of the case and in view of inquiry conducted by Investigating Officer, it is concluded that it is a fit case for award of compensation to the legal heirs/dependents of victim and that legal heirs/dependents of victim are entitled to compensation.

32. Accordingly, out of the fine of Rs. 11 lacs imposed on convict Ariz Khan @ Junaid @ Saleem @ Anna, a sum of Rs.10 lacs be released as compensation to wife of deceased Inspector Mohan Chand Sharma.

33. However, this Court is satisfied that compensation awarded to the wife of victim u/s.357 Code of Criminal Procedure is not adequate. Accordingly, a recommendation is made to District Legal

Service Authority, Delhi, (South), u/s. 357-A Cr.PC, for awarding adequate and proper compensation to the legal heirs/dependents of deceased Inspector Mohan Chand Sharma.

34. Convict is informed that he can file appeal against judgment dated 08.03.2021 and order on sentence within a period of 30 days as per Article 115 of the Limitation Act 1963.

35. Attested copy of judgment, order on sentence, copy of charge, evidence, statement under Section 313 Cr.PC, exhibited documents, be given to convict, free of cost immediately.

36. The exhibits be preserved till the confirmation of death penalty by Hon'ble High Court. The death penalty reference is being sent to Hon'ble High Court of Delhi for the **confirmation** of same. The file be prepared as per Rule 34 of Chapter 24 Part B Vol. III of Delhi High Court Rules and be sent to Hon'ble High Court as per rules. Death sentence shall not be executed unless it is confirmed by Hon'ble High Court.

Copy of this order be sent to concerned Superintendent, Jail, Tihar.

Copy of this order be sent to District Legal Service Authority, Delhi (South-East).

At request, copy of this order be supplied to Ld. Addl.PP for

State.

Original trial court record (main charge sheet) of FIR No. 208/08 registered at PS Jamia Nagar be sent to Hon'ble Delhi High Court in pursuance of order dated 03.05.2018 passed by Hon'ble Delhi High Court in Criminal Appeal No. 1196/13 immediately.

Announced in open Court
on 15.03.2021

(Sandeep Yadav)
Additional Sessions Judge-02 (South-East)
Saket Courts, New Delhi