



2026:DHC:8139-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of order: 22.09.2026

CNR No. DLHC010065542002

+ CRL.A. 949/2002

RAJESH KUMARAppellant
Through: Mr.Dinesh Malik (DHCLSC)
and Mr.Puneet Jain, Advs.
versus

STATERespondent
Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010096872004

+ CRL.A. 451/2004 & CRL.M.A. 5261/2004

RAHISH KHANAppellant
Through: Mr.Ragib Gayyur, Adv.
versus

STATE (NCT OF DELHI)Respondent
Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CNR No. DLHC010062362003

+ CRL.A. 127/2003

NASIM AHMED @ SAGARAppellant
Through: Mr.Rohan J. Alva (DHCLSC)
(Amicus Curiae) and Mr.Anant
Sanghi, Advs.
versus

STATERespondent



Through: Mr.Aman Usman, APP with
Mr.Manvendra Yadav, Adv.
with SI Ramanuj and SI
Rajender, P.S. Nangloi.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

RAVINDER DUDEJA, J. (ORAL)

1. This Court *vide* judgement dated 05th August, 2026, partly allowed CRL.A. 609/2002, CRL.A. 662/2002 and CRL.A. 814/2002 and altered the conviction from Section 302 of the Indian Penal Code, 1860 [“IPC”] to Section 304 Part II IPC and maintained the conviction of appellant Rahish Khan under Section 25 of the Arms Act.
2. We have heard the learned counsels for the appellants and the learned Additional Public Prosecutor for the State on the point of quantum of sentence.
3. The learned *Amicus Curiae* appearing for the appellant Rajesh Kumar in CRL. A. 949/2002, submits that Rajesh is a first time offender, he has no previous criminal antecedents and has already undergone incarceration of about 06 years. He further submits that the appellant had undergone the agony of trial for 20 long years and that his conduct during the trial was good.
4. The learned *Amicus Curiae*, who appears for appellant Nasim Ahmad @ Sagar in CRL. A. 127/2003, also submitted that the appellant has remained in custody for 8 years and 11 months and faced the ordeal of trial for a period of about 20 years. He prays that



the appellant be sentenced with imprisonment for the period already undergone.

5. The learned counsel for the appellant Rahish Khan in CRL.A. 451/2004 submits that appellant is a footpath vendor, selling cold drinks and water. He is the sole bread-earner of his family, comprising of three unmarried daughters and a son. He further states that appellant Rahish Khan has undergone approximately 07 years in custody during investigation/trial of the case. The learned counsel accordingly prays that having regard to alteration of conviction from Section 302 IPC to Section 304 Part II and the period already undergone, the sentence may be restricted to the period already undergone.

6. *Per contra*, the learned APP submits that the appellants do not deserve any indulgence on the question of sentence. He submits that during the pendency of the appeals, appellants Rajesh Kumar and Nasim Ahmad @ Sagar were declared Proclaimed Offenders. He further submits that appellant Nasim Ahmad @ Sagar and Rahish Khan have criminal antecedents. Appellant Nasim Khan @ Sagar has been convicted by the learned Trial Court in case FIR No. 454/2001, under Section 21/61/85 NDPS Act, PS Hari Nagar, while appellant Rahish Khan is also involved in criminal activities, inasmuch as, during suspension of sentence, he got involved in case FIR No. 190/2022, under Section 387/34 IPC, PS Welcome, North-East District and in case FIR No. 197/2022, under Section 25 Arms Act 1959, PS Welcome. It is therefore submitted that the conduct of appellants Nasim Ahmad @ Sagar and Rahish Khan, subsequent to



the commission of the present offence, is also a relevant circumstance, which ought to be taken into consideration while determining the appropriate sentence.

7. We have considered the rival submissions. The conviction of the appellants for the offence punishable under Section 302 IPC has been altered to the one under Section 304 Part II IPC. The offence under Section 304 Part II IPC nevertheless involves culpable homicide with the requisite knowledge that the act is likely to cause death and is a serious offence. The sentence must therefore reflect the gravity of the offence, while at the same time, remaining proportionate to the degree of culpability found proved against the appellants.

8. While considering the question of sentence, the Court is required to balance the aggravating circumstances emerging from the proved facts with the mitigating circumstances concerning the appellants. The period of incarceration is undoubtedly a relevant consideration, though it cannot, by itself, be treated as determinative. Likewise, the fact that the appellant Rahish Khan has dependent family members including unmarried daughters, is a circumstance which may be taken into consideration but cannot eclipse the seriousness of the offence.

9. The submission of the learned APP, regarding the subsequent involvement of the appellants Rahish Khan and Nasim Ahmad @ Sagar in other criminal cases, also deserves consideration. The conviction of Nasim Ahmad @ Sagar in an NDPS Act case is borne out from the nominal roll placed on record. The learned APP has placed on record a report dated 20th September, 2026, which reveals



that appellant Rahish Khan got involved in two more criminal cases in the year 2022. The factum of such subsequent involvements, as borne out from the record, placed before the Court, is a circumstance relevant to the overall assessment of the appellant's conduct.

10. Hence, on an overall consideration of the circumstances including the nature of offence for which the appellants now stand convicted, the alteration of conviction from Section 302 IPC to Section 304 Part II IPC, the period already undergone by them, the family circumstances urged on behalf of the appellants and the subsequent conduct relied upon by the prosecution, we are of the view that the sentence deserves to be calibrated so as to remain proportionate to the offence and the circumstances of the case.

11. Accordingly, the appellants are sentenced to undergo Rigorous Imprisonment for a period of 10 years with benefit of the period already undergone by them in custody under Section 428 Cr. PC. The sentence of fine imposed by the learned Trial Court shall remain undisturbed together with the sentence in default thereof.

12. The sentence of one year RI under Section 25 of the Arms Act awarded by the learned Trial Court to appellant Rahish Khan is maintained, inasmuch as, the learned Trial Court took a lenient view while awarding the said sentence and therefore does not call for any interference. The sentence is directed to run concurrently.

13. Appellant Rahish Khan, who is already in custody, shall undergo the remaining sentence. Superintendent, Jail shall compute the period already undergone and give due credit in accordance with law.



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14. Since the appellants Nasim Ahmad @ Sagar and Rajesh Kumar are already declared Proclaimed Offenders, as and when they are arrested, they be committed to prison to serve the remaining sentence.

15. Copy of the judgment and order passed today, be sent to the learned Trial Court and to Superintendent, Jail for information and necessary action and also for providing a copy of the same to appellant Rahish Khan.

16. The appeals, along with pending applications, if any, stand disposed of.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

SEPTEMBER 22, 2026/na/ak