

IN THE COURT OF MR. DHARMESH SHARMA
PRINCIPAL DISTRICT & SESSIONS JUDGE : NEW DELHI
PATIALA HOUSE COURTS : NEW DELHI

Criminal Appeal No.89/2021

CNR No. DLND01-007756-2021

In Re:

(1)

Gopal Ansal,

S/o Chiranji Lal

R/o House No. 1, 6 Aurangeb Road,

New Delhi-110001

Through:

Shobhit Charla,

S/o Sh. Sunil Charla

R/o House No. 112, Golf Links,

Lodhi Road, H.O. South Delhi,

New Delhi,Appellant

Versus

State..... Respondent

AND

Criminal Appeal No. 90/2021

CNR No.DLND01-007742-2021

In Re:

(2)

Sushil Ansal

S/o Late Sh. Chiranji Lal Ansal

R/o 26, Feroz Shah Road,

New Delhi-110001Appellant

Versus

State of NCT of Delhi

..... Respondent

AND

Criminal Appeal No. 91/2021

CNR No. DLND01-007741-2021

In Re: (3)

P.P. Batra

S/o Late Sh.M.L. Batra,
R/o A-38, Shakti Apartments,
Rohini, Sector-9, Delhi

.... Appellant

Versus

State of Delhi

(NCT of Delhi)

.... Respondent

AND

Criminal Appeal-92/2021

CNR No. DLND01-007766-2021

In Re: (4)

Dinesh Chandra Sharma

S/o Late Sh. Jagram Sharma
R/o 1/1609, Mansarovar Park,
Delhi

..... Appellant

Versus

State, Govt. of NCT of Delhi

..... Respondent

APPEARANCES:

Sh. N. Hari Haran, Ld. Senior Advocate along-with Shri Vikas Aggarwal, Sh. Sushil Kumar Gupta, Sh. Siddarth S. Yadav, Ms. Purya Rekha Angara, Sh. Nitin Pachori, Sh. Prateek Bhalla, Mr. Ikshvaaku Marwaj, Mr. Sushil Satrwa, Mr. Gautam Khazanchi, Sh. Kumar Vaibhav, Ms. Sukanya Joshi, Sh. Vaibhav Dubey and Ms. Somaya Gupta Advocates for appellants Sushil Ansal Gopal Ansal.

Ms. Ridhima Mandhar, Sh. Varun Kumar, Sh. Abhijuday Sharma and Sh. Abhishek Kaliyaran, Advocates for appellant P.P. Batra.

Sh. Sudarshan Rajan, Ld. Counsel for appellant Dinesh Chandra Sharma.

Sh. Tarun Chandiok, Ld. Counsel for appellant Anoop Singh Karayat.

Sh. Vikas Pahwa, Sr. Advocate through Video Conferencing and Ms. Raavi Sharma, Advocate for complainants with complainants Ms. Neelam Krishnamoorthy and Sh. R.Krishnamoorthy, present physically.

Sh. A.T. Ansari, Ld. Addl. PP for the State.

ORDER ON SENTENCE:

1. The above-noted Criminal Appeals filed by the appellants/convicts, namely Gopal Ansal, Sushil Ansal, P.P. Batra and Dinesh Chandra Sharma have been dismissed by this Court vide detailed judgment dated 18th July, 2022 in so far as assailing the impugned judgment on conviction dated 08.10.2021 under Section 409/201 read with Section 120-B of the IPC by this Court and the detailed reasons leading to the conviction of the appellants and the reasons for dismissal of grounds of challenge have been delineated in the Judgment by this Court, which be read as part and parcel of this order on sentence.

2. Commencing the arguments on the point of sentence, Sh. N. Hariharan, Ld. Sr. Advocate for the appellants/convicts Gopal Ansal and Sushil Ansal urged that the sentence awarded by the Ld. Trial Court vide impugned judgment dated 08.11.2021 is perverse and untenable in law although Section 120B of the IPC is a separate offence, the appellants could only be convicted in respect of one substantive charge i.e. Section 201 IPC . Reference was invited to the decision in State vs. Navjot Sandhu 2005 Vol. 11 SCC 600 wherein it was observed as under :

“Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence for which individual offenders are liable to punishment, independent of the conspiracy.”

3. It was vehemently urged that the appellants cannot be convicted under Section 409 read with Section 120B IPC as they were not public servants. Diverting from the technical exposition of law, it was pointed out that even in the main Uphaar case, the Hon’ble Judges of the Supreme Court of India, one after the other in three successive judgments each titled **Sushil Ansal v. State**, (2014) 6 SCC 173, (2015) 10 SCC 359 and (2017) 3 SCC 788, took note of the advanced age of the appellant Sushil Ansal and he was sentenced under Section 304A of the IPC and other offences for a maximum period of two years. It was urged that appellants have faced a prolonged trial and appellant Sushil Ansal is now 83 years of age and his medical condition has deteriorated, for which reference was made to the medical report filed through the

Superintendent Jail, Tihar on 20.05.2012 pointing that appellant Sushil Ansal has been suffering from Hepatitis C, Genotype-3, Cardio-vascular diseases, Asthma and Bronchitis, obstructive pulmonary disease, Type II diabetes, Hypodensity in the brain, Hyponatremia, Micturition Syncope, History of Covid, History of Pulmonary Koch's and Thyroidism. The appellant Sushil Ansal has one son and two daughters in his family.

4. In so far appellant Gopal Ansal is concerned, it was urged that he is also now 74 years of age having a wife and two of his married daughters are living abroad and that he has been suffering from Benign Prostatic Hypertrophy, Dysuria, Diabetes Mellitus, Hypertension, Urinary Tract Infection, Prolapse Intervertebral Disc, Renal Disorder and Liver Damage, so much so that after contracting Covid-19 virus, his lung capacity has been reduced to 45%. Lastly, it was urged that the impugned order of sentence dated 08.11.2021 is highly punitive and retributive in nature, for which, reliance was placed on the decision in **Dr. Jacob George vs. State of Kerala** (1994) 3 SCC 430 and also relied upon the observation in the case of Association of Victims of Uphaar Tragedy vs. Sushil Ansal 2017(3) SCC 788 by which lighter sentence was awarded to the appellant Sushil Ansal. Reference was also invited to decisions in State of Orissa vs Nakul Sahu, (1979) 1 SCC 328 and Dayanand Ram Krishna Shet vs State of Karnataka, (2014) 14 SCC 22.

5. Sh. Sudharshan Rajan, Ld. Counsel for appellant/convict Dinesh Chandra Sharma urged that this court must take into account the fact that appellant has remained in judicial custody for about 11 & 1/2

months, who is 52 years of age now and after dismissal of service completed LL.B, having a wife and two unmarried children, a boy and a girl, aged about 23 and 22 years respectively, apart from taking care of family of his younger brother, who has since expired viz. the wife and the nephew. He is also suffering from B.P. and Arthritis. Arguing that purpose of sentence has ceased to be retributive or punitive in nature, the whole focus of penal law is reformation and deterrence, it was urged that appellant has already lost his job and although, the appeal is pending against his dismissal from services before the Hon'ble Judge, Appellate Authority in the Delhi High Court, there is no way that he is going to get his job back owing to the conviction in the present case. It was canvassed that appellant has suffered two punishments and during the period of incarnation, he was rendering services in the Legal Aid Clinic in the Jail to the other inmates and he has been given several certificates for appreciation of hard working.

6. Ms. Ridhima Mandhar, Ld. Counsel for appellant/convict P.P. Batra urged that her client is now 60 years of age having two unmarried children, a daughter and a son, besides of course wife; that he has suffered ignominy of this trial for now 20 years and due to media trial, his family has been subjected to public ridicule unmindful of the fact that he had not gained anything by doing what was attributed or held against him in the trial; and that he was a mere hardworking Stenographer and but for his association with unscrupulous individuals, he would not even have seen the courts of law. Requesting for taking a

lenient view, she referred to the certain observation in **Mohd. Haneefa vs. State of Kerala**, Crl. Appeal No. 2920/2008 decided by Hon'ble Judge of High Court of Kerala dated 24.02.2020 and **Jan Mohamad vs. State of Haryana**, (2019) 3 SCC 201. Each of the Ld. Counsel for the appellants prayed for a lenient view and requested the court to sentenced them for the period already undergone by them.

7. *Per contra* Sh. A.T. Ansari, Ld. Addl. PP for the State has filed written submission as also on behalf of complaint AVUT submitted by Sh. Vikas Pahwa, Ld. Sr. Advocate, who was stated to be held in the High Court. Ld. Addl. PP for the State strenuously urged that the case of this nature where judicial record was misplaced, tampered or defaced is akin to committing murder and dacoity and this court should not lean into the emotional submissions made by the Ld. Counsel for the appellants, considering that the nature and gravity of the offences was such that the Hon'ble High Court of Delhi was constrained not only to direct registration of FIR, but also direct the investigation to be conducted by Crime Branch, Delhi Police by an official not below the rank of ACP. It was pointed out that the gravity of the offences committed by the appellants was such that although the sentence was suspended by the Hon'ble High Court of Delhi, on filing of criminal appeal, the Hon'ble Judge of the Supreme Court took a serious view of the matter and set aside the suspension of sentence during the time when the investigation was going on. It was urged that in an instant case like the present one, this court has to apply a different yardstick since the

appellants Sushil Ansal and Gopal Ansal are potential and perennial threat to the justice delivery system and they do not deserve any leniency. Ld. Addl. PP for the State referred to the chronology of various offences committed by the appellants Sushil Ansal and Gopal Ansal who forged and fabricated documents in connivance with officials from the various government departments that ultimately led to a huge tragedy at Uphaar Cinema that resulted in death of several persons as young as three years old child and several other getting injured. It was pointed out that other criminal cases are pending against the appellant Sushil Ansal for obtaining Passport by concealment of pendency of earlier case and there are pending as many as 22 prosecution against them in various courts or tribunals in Delhi on various counts of offences, to which, it was replied by the Ld. Sr. Advocate that the same are prosecution for minor infraction of rules and regulations pertaining to certain special offences by their company. Anyhow, Ld. Addl. PP for the State referred to the decision in **Abdul Waheed v. State of Uttar Pradesh**, (2016) 1 SCC 583 wherein in a murder case that occurred in the year 1974 involving killing of two persons and many other who were injured, no leniency was afforded to the appellant who by that time was ninety years of age. Likewise, reference was made to the decision in **Sajjan Kumar v. State of NCT** where even interim bail on medical ground was disallowed by the Hon'ble Judges of the Supreme Court of India.

8. On the conclusion of arguments by Ld. Counsel for the appellants and the Ld. Addl. PP for the State, this court also heard Ms. Neelam Krishnamoorthy, who pointed out that a false affidavit was filed by the appellant Gopal Ansal that he had paid Rs.30 Crores as compensation, which was not compensation but fine. She vociferously and in a very emotional state of mind pleaded that this court should not to accord any leniency to the appellants Sushil Ansal and Gopal Ansal, stating that she has lost entire family in the tragic fire incident at Uphaar case and she is living alone with no one else there even to cremate her when she would die. She urged that the appellants Ansals are never going to learn and while the appellants have families, children and grand-children, she has no one and the appellants out of great greedy created such situation that led to the tragic fire and for the last 25 years, she has been running from the District Courts to High Court and thereafter to Supreme Court seeking justice spending her entire youth so that there is brought solace and peace to the departed souls.

9. Having heard the learned Counsel for the appellants and the Ld. Addl. PP for the State, it would be expedient to have a short academic discussion on the law governing sentencing in criminal jurisprudence.

LAW ON SENTENCE

10. Sentencing is a very onerous task in the matters of crime. There is no gainsaying that one of the prime objectives of the criminal

law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime but then the twine objectives of the sentencing policy is deterrence and correction. The principle of proportionality in sentencing an offender is well ordained in criminal jurisprudence. In the case of **State of M.P. v. Munna Choubey**, (2005)2 SCC 710, it was observed that:

“The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of “order” should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: “State of criminal law continues to be — as it should be — a decisive reflection of social consciousness of society.” Therefore, in operating the sentencing system, ***law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.*** The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of

innocent people would call for imposition of death sentence as deterrence. [Paragraph 9] **{bold italics emphasized}**

11. In another case titled **Hazara Singh v. Raj Kumar**, [(2013) 9 SCC 516, where the High Court had reduced the quantum of sentence to the period already undergone in judicial custody and it was held that:

“10.... it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. **The punishment awarded should be directly proportionate to the nature and the magnitude of the offence.** The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict.

17. We reiterate that in operating the sentencing system, **law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.** We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

{bold italics emphasized}

12. In this context, it was further observed in the case of **State of M.P. v. Suresh** (supra) that:

“Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. *Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large.* No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten. {Para13} **italics emphasized**”

13. Avoiding lengthy academic discussion on the principles of sentencing, in another recent decision in the case of **State of M.P. v. Udham**, (2019) 10 SCC 300, it was observed that:

12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

14. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.”

15. In view of the foregoing academic discussion and legal submissions advanced at the Bar, **First thing first**, the impugned order on sentence dated 08.11.2021 passed by the learned trial Court in so far as it upheld that the complainant- “Association of Victims of Uphaar Tragedy (Registered)” is a ‘Victim’ within the meaning of Section 2 (wa) read with Section 39 (1) (viii) Code of Criminal Procedure, 1973 cannot be faulted in law. Ld. Trial Court has rightly found recourse to Section 11 of the IPC where the term ‘person’ is defined as including any Company or Association or body of persons, whether incorporated or not and it has rightly found correlation with Section 23 of the IPC by which it means that Association has suffered “wrongful loss or injury” read with Section 44 of the IPC. Ld. Trial Court rightly considered the provisions of Section 357 of the Cr.P.C. and rightly relied on decision in the case of **Karan v. State** CrI. M.A. 352/2020 dated 27.11.2020 by the Hon'ble High Court of Delhi. No questions were raised by the learned Counsel for the appellants on that score.

16. To sum up, it has been rightly concluded that the ‘Association of Victims of Uphaar Tragedy’ is a person/aggregate of persons that have been espousing the cause of those who died and got grievously injured in an unfortunate tragedy at Uphaar Cinema Hall

while screening a Hindi film on 13.06.1997. This Court also subscribesto the view taken by the learned Trial Court that the rights of the ‘AVUT’ cannot be wittled down because they have not been named as victims in the charge-sheet and this Court has to take into account the broad reality of facts and circumstances, the genesis of which lays in the main Uphaar case.

17. **Secondly**, on point of sentence, considering the nature of the crime, the social and economic status of the appellants- convicts, the duration of crime committed and ultimate impact on the speed of the trial in the main Uphaar case and also considering the mitigating circumstances brought forth by the learned Counsel for the appellants, this Court finds that quantum of sentence of imprisonment awarded by the Ld. Trial Court *is not only harsh, onerous but also disproportionate to the offence committed.* This Court under Section 386(b) (iii) of the Cr.P.C. can with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same. The *whole tone and tenor* of the impugned order on sentence dated 08.11.2021 would show that the Ld. Trial Court passed the order on sentence, which by all parameters was punitive and retributive in nature so as to teach a lesson to the appellants Sushil Ansal and Gopal Ansal.

18. The plea by the Ld. Addl. PP for the State that different yardstick be applied for awarding sentence since public perception is built up that big and powerful people get away with anything. This

Court is not oblivious of public sentiments or for that matter the sentiments espoused by Ms. Neelam Krishnamoorthy for the 'AVUT' but then the instant case is not all about appellants Sushil Ansal and Gopal Ansal, howsoever notorious they might be. It is more importantly about appellants Dinesh Chandra Sharma and P.P. Batra. Considering the long years of service in justice delivery system and experience, to my mind the worst culprit in this case was appellant Dinesh Chandra Sharma, who fell prey to the criminal conspiracy hatched by appellants Sushil Ansal and Gopal Ansal to cause disappearance of vital piece of evidence.

19. All said and done, the Trial in the main case was delayed hardly by six months and there is substance in the plea raised by the learned Counsels for the appellants that the impugned order on sentence has left out just, fair and humane considerations while awarding the impugned sentence in complete disregard to the mitigating circumstances such as age, ailments and the sufferance of protracted trial for now almost 20 years each of the appellants. The impugned order on sentence absolutely sidelined the criminal jurisprudence on sentencing that envisages punishment in proportion to the crime committed and sentence with the **avowed** object of deterrence and reformation, for which In the case of **Dr. Jacob George vs State of Kerala** (supra), it was observed as under:

17. Let us now deal with Shri Jain's submission that the substantive period of imprisonment may be reduced to the one already undergone which 1 (1972) 1 Cri LJ 1488 :1972 Mad LW (Cri) 141 is of about 2 months. To decide whether

this contention merits acceptance, we have to inform ourselves as to why a punishment is required to be given for an offence of criminal nature. The purpose which punishment achieves or is required to achieve are four in number. First, retribution: i.e. taking of eye for eye or tooth for tooth. The object behind this is to protect the society from the depredations of dangerous persons; and so, if somebody takes an eye of another, his eye is taken in vengeance. This form of protection may not receive general approval of the society in our present state of education and understanding of human psychology. In any case, so far as the matter at hand is concerned, retribution cannot have full play, because the sentence provided by Section 314 is imprisonment of either description for a term which may extend to ten years where the miscarriage has been caused with the consent of the woman as is the case at hand. So death penalty is not provided. The retributive part of sentencing object is adequately taken care of by the adverse effect which the conviction would have on the practice of the appellant.

18. The other purpose of sentence is preventive. We are sure that the sentence of imprisonment already undergone would be an eye-opener to the appellant and he would definitely not repeat the illegal act of the type at hand.

19. Deterrence is another object which punishment is required to achieve. Incarceration of about two months undergone by the appellant and upholding of his conviction by us which is likely to affect the practice adversely, would or should deter others to desist them from indulging in an illegal act like the one at hand.

20. At the cost of repetition, this Court understands that Uphaar fire tragedy was one where several lives were lost and many were injured that must have caused deep anguish, pain and perennial misery to the effected family members and it is difficult to comprehend that family members would be able to forget such incident and forgive the offenders. It strikes to human notions and understanding that the surviving family

members, who have now joined together by forming an Association viz. 'AVUT', do not want the culprits to go scot free and enjoy any rights and liberties in their remainder of their lives but this whole criminal litigation cannot be converted by the prosecution into a inhuman and vindictive approach to the present appellants/convicts.

21. It is a matter of record that appellants Sushil Ansal and Gopal Ansal were the main accused out of 16 accused persons in the main Uphaar case and they have ultimately been convicted under Sections 304A, 337/338 read with Section 36 IPC and Section 14 of Delhi Cinematograph Act, 1952 and have been sentenced to undergo imprisonment for various terms and each has deposited Rs. 30 crores towards the fine. In so far as the instant matter is concerned, this Court has already upheld the findings recorded by the Ld. Trial Court against the two appellants Sushil Ansal and Gopal Ansal and deceased accused H.S. Panwar who in all human probabilities hatched a criminal conspiracy to cause disappearance of certain documents that were incriminating them during the trial of the main Uphaar case and they roped in the services of their employee i.e. the appellant P.P. Batra, who abetted the offence of misplacing, tampering or defacing the judicial record through the active connivance and dishonest intention of the public servant appellant Dinesh Chandra Sharma. The trial indeed got delayed for about six months but then at the cost of repetition the appellants Sushil Ansal and Gopal Ansal were convicted and have

already served the punishment provided therein, which have been upheld upto the Superior Court. Thus, instant matter can not taken be considered to be an extension of the punishment awarded in the main Uphaar fire tragedy case

22. Adverting to the submissions by the learned defence Counsel that common objective of the criminal conspiracy and abettment in getting the documents misplaced, tampered or defaced was to escape the punishment or screening the offenders in terms of Section 201 IPC and it would be expedient to refer to Section 201 of the IPC which provides as under:

“201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the

longest term of the imprisonment provided for the offence, or with fine, or with both.

23. A bare perusal of the last limb of the aforesaid provision would show that where the punishment is less than 10 years, then the imprisonment for committing the offence of causing disappearance of evidence and screening the offenders may extend only up to one fourth part of the longest term of the imprisonment provided for the offence or with fine or with both. There is considerable merit in the plea of Mr. N. Hari Haran, Ld. Senior Counsel that the offences that were subjectmatter in the main Uphaar case were one where the appellants Gopal Ansal and Sushil Ansal were convicted under Section 304-A of the IPC besides other analogous offences with regard to criminal rashness and negligence but then the punishment under Section 304-A of the IPC is maximum up to two years. Having said that, what is pertinent is that appellant Dinesh Chandra Sharma was a 'public servant' and he did commit the offence of criminal "breach of trust" by facilitating or getting the document misplaced, tampered or defaced with the object of screening the offenders in the pending trial.

24. Now, though Section 409 of the IPC is visited with maximum punishment up to the life or with imprisonment of either description for a term which may extend to ten years, *the proportionality test in criminal jurisprudence applied in the instant case* by no stretch of imagination could be applied in manner so as to make the appellants Sushil Ansal and Gopal Ansal suffer greater

punishment for what they have actually served for commission of offences in the main Uphaar Case, since that would be in the realm of “double jeopardy”. What can not be directly, can not be enforced indirectly by the Prosecution since that course of action would be patently unconstitutional.

25. In so far as appellant Dinesh Chandra Sharma is concerned, the only mitigating factor that I find is that he has already suffered punishment in the nature of dismissal from service and neither any evidence was found during investigation against him nor any *iota* of evidence was brought forth worth its salt on the record by the prosecution during the Trial that he obtained any pecuniary benefit out of the while episode. While, the appellant P.P. Batra has suffered for being faithful employee to his masters, it manifest that the appellant Dinesh Chandra Sharma has suffered for being a naive, gullible and morally depraved Court staff.

26. In view of the foregoing discussion, I am unable to persuade myself to sustain the impugned order on sentence dated 08.11.2021 passed by the Ld. Trial Court, and in terms of section 386(b)(iii) of the Cr.P.C, retaining the imposition of fine awarded by the Ld Trial Court except for diluting the same for the appellants Dinesh Chandra Sharma and P.P.Batra, the sentence of imprisonment is modified as under:

- (i) The appellants Sushil Ansal and Gopal Ansal are sentenced to imprisonment for the period already undergone by them in the judicial custody under Section 120-B IPC and also directed to pay fine of Rs. One crore each as imposed by

the Ld. Trial Court, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue under Section 421 Cr.P.C.

(ii) Further, the appellants Sushil Ansal and Gopal Ansal are also sentenced to imprisonment for the period already undergone by them in judicial custody under Section 409 read with Section 120-B IPC and also sentenced to pay fine of Rs. One crore each, as imposed by Ld. Trial Court, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue.

(iii) Lastly, the appellants Sushil Ansal and Gopal Ansal are also sentenced to imprisonment for the period already undergone by them in judicial custody under Section 201 read with Section 120-B IPC and also sentenced to pay fine of Rs. One crore each, as imposed by Ld. Trial Court, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue.

(iv) Likewise, the appellant P.P. Batra is sentenced to imprisonment for the period already undergone by him in the judicial custody under Section 120-B IPC and also directed to pay fine of Rs. 10,000/-, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue under Section 421 Cr.P.C.

(v) Further, the appellant P.P. Batra is also sentenced to imprisonment for the period already undergone by him in judicial custody under Section 409 read with Section 120-B IPC and also sentenced to pay fine of Rs.

10,000/-, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue.

(vi) Lastly, the appellant P.P. Batra is also sentenced to imprisonment for the period already undergone by him in judicial custody under Section 201 read with Section 120-B IPC and also sentenced to pay fine of Rs. 10,000/-, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue

(vii) The appellant Dinesh Chandra Sharma is also sentenced to imprisonment for the period already undergone by him in judicial custody under Section 120-B IPC and also sentenced to pay fine of Rs. 25,000/-, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue.

(viii) Further, the appellant Dinesh Chandra Sharma is sentenced to imprisonment for the period already undergone by him in the judicial custody under Section 409 read with Section 120-B of the IPC and also directed to pay fine of Rs. 25,000/-, which be paid within seven days from today, failing which the same shall be recoverable as per arrears of land revenue under Section 421 Cr.P.C.

(ix) Lastly, the appellant Dinesh Chandra Sharma is sentenced to imprisonment period already undergone by him in judicial custody under Section 201 read with Section 120-B IPC and also sentenced to pay fine of Rs. 10,000/-, which be paid within seven days from today, failing which the same

shall be recoverable as per arrears of land revenue.

27. The fine so realized from the appellants be paid as compensation to the ‘Association of Victims of Uphaar Tragedy (Registered)’ after defraying the costs of litigation payable to the State.

28. The appellants Sushil Ansal, Gopal Ansal, P.P. Batra and Dinesh Chandra Sharma are directed to be released forthwith, if not required in any other case. The appellants/convicts are enjoined upon to pay the fine in the Ld. Trial Court within the time stipulated.

29. At this stage, as requested by the learned Counsel for the appellant Anoop Singh Karyat who has since been acquitted of the charges vide Judgment dated 18.07.2022, it is clarified that he is directed to furnish the bail bond-cum-surety bond in the sum of Rs. One Lac within three days in terms of Section 437-A Cr.P.C. for a period of six months to the satisfaction the Ld. Trial Court.

30. A copy of Judgment and order on sentence be given to the appellants free of costs. A copy of Judgment and order on sentence be also sent to the Jail Superintendent, Central Jail, Tihar, New Delhi for information and compliance.

31. The original judgment and order on sentence be kept in file bearing Criminal Appeal No. 89/2022 and signed photocopy of Judgment and order on sentence be placed in the remaining appeal files. All the five appeal files be consigned to the Record Room.

Announced in the open Court
on 19th July, 2022

(DHARMESH SHARMA)
Principal District & Sessions Judge (NDD)
Patiala House Courts, New Delhi