

\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 385/2005**

UDAYPAL @ SHIVA

..... Appellant

Through: Mr. Deepak Anand, Standing Counsel
(DHCLSC) with the appellant.

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

15.06.2018

%

The appellant is present and submits in reply to a specific Court query that he does not seek to contest the appeal any more.

The nominal roll has been received from the Superintendent Jail, Central Jail No.03, Tihar, New Delhi indicating that the appellant has been released on 12.08.2017 after the expiry of the sentence and after payment of the fine at the jail gate vide receipt no. 68 on 10.07.2007.

Vide the impugned judgment dated 04.01.2005 of the Court of the ASJ, New Delhi in State Case No.102/2004 in FIR No.30/2001, PS Okhla Industrial Area, the appellant Udaypal @ Shiva s/o Shri Raghuvir along with co-accused Deepak @ Shokeen was convicted for the commission of the offence punishable under Sections 353/333 r/w Section 34 Indian Penal Code, 1860 and both the appellant and the co-accused in the said case were acquitted qua the offence punishable under Section 307/186/34 Indian Penal Code, 1860 and vide the impugned order on sentence dated 06.01.2005, inasmuch as the appellant herein along with the co-convict was held to have

been in direct challenge with the authority established by law with the Constables by attempting to stop them in performance of their duties, the appellant and the co-convict were sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.2,000/- each and in default to six months of Rigorous Imprisonment qua the offence punishable under Sections 333/34 Indian Penal Code, 1860 and to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/- each and in default to one month of Rigorous Imprisonment qua the offence punishable under Section 353/34 Indian Penal Code, 1860 with the benefit of Section 428 Cr.PC, 1973 equally being given and all the sentences were directed to run concurrently.

On a perusal of the impugned judgment which brings forth that the appellant herein along with the co-convict Deepak was sitting in a green colour Maruti car on 18.01.2001 at about 8:30 pm near the Mother Dairy booth near the GB Pant Polytechnic College within the area of PS Okhla Industrial Area and when two Constables went towards the car in which they were seated, on the asking of the Constables the two persons came out and started running, one of the persons was seated on the driver seat and one on the rear seat and the appellant, as per the record, is indicated to have been the person sitting at the driver's seat and the Constable chased the person who was taller and sitting on the rear seat i.e. co-convict Deepak whereas another Constable chased another boy i.e. the appellant and when Constable Sanjeev Kumar was close to the person Deepak, the appellant herein Udaypal exhorted to Deepak "*abto fas gai hain goli chalade*", as a consequence of which, the co-accused Deepak is stated to have fired the

gun shot on Constable Sanjeev Kumar when he was about to nab him, whereafter the injured Sanjeev Kumar was taken to the AIIMS by Constable Ramji Lal and as a result of the bullet injury, the Constable sustained a fracture on the right hand thumb and was unable to sign the same. The MLC Ex.PW5/1 of the injured Constable Sanjeev Kumar indicates that there is an ex-ray also conducted of his hand and the testimony of Sanjeev Kumar is to the effect that he sustained a fracture on his right hand thumb and was unable to sign with the same at that time and he volunteered further that even on the date of his testimony i.e. 27.02.2002, he was unable to bend his right hand thumb.

Taking the same into account, despite the submissions made on behalf of the appellant by learned counsel that the ingredients of Section 333 Indian Penal Code, 1860 are not brought forth inasmuch as no grievous hurt was caused to the public servant at the time of discharge of his duty as the injuries sustained by Constable Sanjeev Kumar were such that even on the date 27.02.2002 of his testimony much after the injuries had been caused to him on 18.01.2001 i.e. much that beyond a period of 20 days from the date of the injury caused to him, he had been unable to follow his ordinary pursuits and had been in pain, the injury caused to the injured Constable Sanjeev Kumar who also testified to the effect that there was a fracture in the right hand thumb, falls within the ambit of Section 320 'eightly' of the Indian Penal Code, 1860 and thus the offence punishable under Section 333 Indian Penal Code, 1860 has rightly held to have been established against the appellant and so also is the charge qua the commission of the offence punishable under Section 353 Indian Penal Code, 1860 against the appellant.

There being no infirmity in the impugned judgment dated 04.01.2005 in relation to FIR No.30/2001, PS Okhla Industrial Area, the appellant having undergone the period of sentence as imposed vide the impugned order on sentence dated 06.01.2005 as indicated vide the nominal roll that he has undergone a period of three years, two months and fifteen days of the sentence imposed of four years of Rigorous Imprisonment with a fine of Rs.2,000/- and in default to six months of Rigorous Imprisonment qua the offence punishable under Section 333 Indian Penal Code, 1860 and to undergo one year of Rigorous Imprisonment with a fine of Rs.5,000/- and in default to one month of Rigorous Imprisonment qua the offence punishable under Section 353 Indian Penal Code, 1860 with the benefit of remission of nine months and fifteen days having been awarded to the appellant with the fine having been already paid by the appellant at the jail gate vide jail gate receipt no.68 dated 10.07.2007 and the appellant having been released thereafter on 12.08.2017 after the expiry of period of sentence, there is nothing more that survives in the instant appeal and thus the appeal is dismissed.

The TCR be returned.

ANU MALHOTRA, J

JUNE 15, 2018

Vm