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

Judgment delivered on: 26.07.2019

+ CRL.A. 515/2018

SHIVA @ GAURAV & ANR Appellants

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

+ CRL.A. 517/2018

SUNNY & ANR Appellants

versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. R.C. Tiwari with Mr. Divyank Tiwari,
Advocates with appellants in person.

For the Respondent: Mr. Hirein Sharma, APP for the State.
SI Vinay, PS Ambedkar Nagar.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CRL.A. 515/2018 & Crl.M.(Bail) 724/2018 (for suspension of sentence) & CRL.A. 517/2018 & Crl.M.(Bail) 726/2018 (for suspension of sentence)

1. Appellants impugn judgment on conviction dated 12.04.2018 and order on sentence dated 13.04.2018, whereby, appellants Shiva @ Gaurav and Shibu @ Shiv Nath have been convicted of an offence under Section 323/34 IPC and sentenced to undergo rigorous imprisonment for a period of 6 months and Appellants Sunny and Avinash @ Honey have been convicted of an offence under Section 304 (Part II) read with Section 34 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and to pay fine of Rs.25,000/- and in default to further undergo simple imprisonment for a period of 6 months.

2. The case of the prosecution is that information was received that an injured had been taken to AIIMS Trauma Centre. The injured was found unfit for statement.

3. One of the friends of the injured, who was found fit for statement, given a statement that the victim along with his friends were playing cricket. The appellants were members of the opposite cricket team. The victim was bowling and there was a dispute with regard to the declaration of a ball as a 'no ball', consequent to which a fight took place.

4. It is alleged that Avinash @ Honey, who was carrying a cricket bat hit the victim with the bat and Sunny removed the cricket stump and also blindly hit Ajay with the same. Shiva and Shibu are alleged to have removed the stumps and hit the victim with the stumps. The

victim expired after four days.

5. The Trial Court based on evidence found the appellants Shiva @ Gaurav and Shibu @ Shiv Nath guilty of the offence under Sections 323/34 IPC and the appellants Sunny and Avinash @ Honey guilty of the offence under Section 304 (Part II)/34 IPC.

6. Learned counsel for the appellants submits that the appellants are first time young offenders and on the day of the incident Shiva was aged 19 years, Shibu 22 years and Sunny and Avinash 23 and 22 years respectively. He submits that the appellant Shiva was a student.

7. Learned counsel for the appellants submits that from the prosecution evidence it is apparent that there was no premeditated intention to cause either any injury or to cause death and the dispute occurred while playing cricket on the spur of the moment and in the heat of the moment subject incident happened, which led to the unfortunate death of the victim.

8. Learned counsel for the appellants further submits that the Trial Court had even referred the matter to the Delhi Legal Services Authority for grant of compensation to the family members of the deceased under the Victim Compensation Scheme.

9. Learned APP for the State, under instructions from the Investigating Officer, submits that he is not aware as to whether any compensation under the Victim Compensation Scheme was disbursed

or not.

10. On perusal of the record, I am satisfied that there is no infirmity in the view taken by the Trial Court in returning a finding of guilt as against the appellants for the sections that they have been found guilty of. However, perusal of the Nominal Roll of the appellants shows that Shiva has undergone 5 months 5 days of incarceration out of 6 months, Shibu has undergone 5 months 4 days of incarceration out of 6 months, Sunny has undergone 2 years 6 months 28 days of incarceration out of 3 years and Avinash has undergone 2 years 5 months 14 days of incarceration out of 3 years.

11. As per learned counsel for the appellants, the compensation directed to be deposited of Rs.25,000/- each by Sunny and Avinash has already been deposited and disbursed to the family of the victim.

12. Keeping in view the totality of facts and circumstances of the case and also the fact that at the time of the incident the appellants were aged between 19 and 23 years and further taking into account the mitigating circumstances that they are first time offenders and there is no allegation that they have indulged in any further criminal activity and further the fact that the disputes occurred on the spur of the moment without any premeditation, I am of the view that the interest of justice would be served, where while upholding the order of conviction, order of sentence is modified and reduced to the period already undergone by the appellants.

13. Further, it is directed that the appellants shall, as a way of further service to the community, plant 50 trees each and for the same they shall report to the Deputy Conservator of Forests (North), who shall assign them duties to plant 50 trees each in Delhi. The plants/trees shall be of deciduous indigenous variety with a nursery age of three and a half years, and a height of at least six feet. Depending upon the soil type and topography, the DCF may consider the following types of trees for plantation:-

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| (i) <i>Gular (Cluster Fig)</i> | (ii) <i>Kadamba (Burflower Tree)</i> |
| (iii) <i>Pilkhan (White Fig)</i> | (iv) <i>Jaamun (Black Plum)</i> |
| (v) <i>Bargad (Banyan Tree)</i> | (vi) <i>Mango</i> |
| (vii) <i>Amaltas (Golden Shower)</i> | (viii) <i>Mahua (Butter Tree)</i> |
| [<i>Indian Laburnum</i>] | |
| (ix) <i>Putranjiva</i> | (x) <i>Badh</i> |
| (xi) <i>Sagwan (Teak Wood)</i> | (xii) <i>Safed Siris (Albizia Procera)</i> |
| (xiii) <i>Kala Siris</i> | (xiv) <i>Anjeer</i> |
| (xv) <i>Kathal- Jackfruit</i> | (xvi) <i>Palash</i> |
| (xvii) <i>Arni</i> | (xviii) <i>Bistendu</i> |
| (xix) <i>Rohida</i> | (xx) <i>Medshingi</i> |

13. An affidavit of compliance shall be filed by the petitioners as well as the DCF on or before 26.09.2019, failing which the Registry shall list the case for directions. Aerial pictures, prior to and after the afore-directed plantation, shall be obtained by the DCF and filed along with his affidavit. Similar quarterly updates shall be obtained by him to monitor and ensure the upkeep of the said plantation. A Report of the same shall be filed six months after the plantation, along with

fresh photographs to show the health/status of the plantation. In case of default, the Registry shall list the case for directions.

14. Further, the Delhi State Legal Services Authority shall also file an affidavit indicating as to whether any compensation has been paid to the family of the deceased in terms of the judgment of the Trial Court dated 13.04.2018 and if not, then the order be complied with within a period of four weeks from today.

15. The appeals and pending applications are, accordingly, disposed of in the above terms.

16. Copy of the order be communicated to the concerned Superintendent, Jail, Deputy Conservator of Forests (North) and the Secretary Delhi State Legal Services Authority.

17. Order *Dasti* under signatures of the Court Master.

JULY 26, 2019
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SANJEEV SACHDEVA, J