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

+ **CRL.A. 354/2020**

SH. CHETAN @ SANDEEP

..... Appellant

Through: Mr Sougat Mishra, Advocate.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr Amit Gupta, APP for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **24.07.2020**

[Hearing held through videoconferencing]

CRL. M.A. 9260/2020

1. The appellant has filed the present appeal impugning an order dated 01.08.2019 passed by the learned ASJ, whereby the appellant and the other co-accused were convicted of committing an offence punishable under Sections 304 (Part I) and 34 of the Indian Penal Code, 1860 (IPC). The appellant also impugns an order dated 21.08.2019, whereby he and other accused was sentenced to serve rigorous imprisonment for a period of five years with a fine of ₹1,00,000/- each. The Trial Court further directed that in default of payment of fine, the persons convicted would serve simple imprisonment for a period of six months.

2. By the said order dated 21.08.2019, the Trial Court also directed that out of the amount of fine collected, a sum of ₹2,00,000/- would be paid to

the legal representatives of the deceased as compensation under Section 357 of the CrPC.

3. The present appeal was listed on 15.07.2020 and Mr Mishra, learned counsel appearing for the appellant, had stated that the appellant did not wish to challenge the order dated 01.08.2019, whereby he was convicted and restricted the present appeal to impugning the order on sentence dated 21.08.2019.

4. The appellant had served the prison sentence and is currently serving simple imprisonment on account of default in payment of fine of ₹1,00,000/- as imposed by the order dated 21.08.2019.

5. The appellant and other co-accused were convicted as it was established that they had attacked the victim (Anil) with knives. The victim was injured and in his statement, he stated that he worked as a labourer at Gazipur Murga Mandi and the accused had been pressurizing him to join them in their illegal acts (*badmashi*). He stated that he was not willing to do so and therefore, they threatened him and after abusing him had stabbed him with knives. The victim (Anil), subsequently, expired on account of septicemia (spread of infection from his wounds).

6. Mr Mishra submitted that the appellant was not from the economic strata that could afford to pay a fine of ₹1,00,000/-. He submitted that in the circumstances, imposition of a fine of ₹1,00,000/- was excessive and manifestly erroneous. He referred to the decision of the Supreme Court in *Shanti Lal v State of M.P.: (2007) 11 SCC 243* and the decision of this

Court in *Suraj @ Suresh v. State (NCT) of Delhi: Crl. A. 513/2006*, decided on 17.11 2009.

7. He contended that a default sentence is imposed not as a punishment for the offence committed but for failure to pay the fine imposed. He submitted that in *Shanti Lal (supra)*, the Supreme Court had reduced the default sentence from three years to six months as the Court could not reduce the fine of ₹1,00,000/- as that is the minimum fine stipulated in the Narcotic Drugs and Psychotropic Substances Act, 1985. He submitted that in the present case, this Court ought to either reduce the quantum of fine or the default sentence.

8. He relied upon the decision of a coordinate bench of this Court in *Suraj @ Suresh (supra)*, where this Court had keeping in view the financial incapacity of the appellant, reduced the period of imprisonment directed to undergo in default of payment of fine..

9. The limited issue to be addressed is whether the imposition of a fine of ₹1,00,000/- and the direction to undergo a further simple imprisonment for a period of six months in default of payment of the fine, is manifestly erroneous. This Court is of the view that the quantum the fine must also be considered in the context of the offence committed by the accused.

10. In the present case, the victim had lost his life on account of the injuries suffered on being attacked by the appellant and other co-accused. He was a young person and several persons were dependent on him. The Trial Court had imposed a fine of ₹1,00,000/- keeping the aforesaid in mind.

Keeping the aforesaid in view, this Court is unable to accept the said sentence imposed is either unduly excessive or manifestly erroneous.

11. It is relevant to note that the Trial Court had also awarded ₹2,00,000/- as compensation to the kin of the victim. There are five persons convicted of the offence and if each of them paid a sum of ₹40,000/-, the said compensation could be paid to the legal representatives of the deceased. However, this Court is informed that none of them have paid the fine imposed on them. This Court had pointedly asked whether the appellant would be willing pay his share of compensation of ₹40,000/-. Mr Mishra stated that he had obtained instructions in this regard and the accused was not in a position to pay the same.

12. As stated above, this Court finds no manifest error in imposing the fine of ₹1 lac and a default sentence of simple imprisonment for a period of six months. Further, even if the fine is reduced, the appellant has expressed his inability to pay the same. Thus, in essence, the appellant seeks reduction in the period of the default sentence. This Court finds no reason to so direct.

13. In view of the above, the appeal is dismissed.

VIBHU BAKHRU, J

JULY 24, 2020
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