

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 988 OF 2021

(Arising out of SLP(Crl.) No(s). 1516 of 2020)

SY. AZHAR SY. KALANDAR

....APPELLANT(S)

VERSUS

STATE OF MAHARASHTRA & ANR.

...RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The appellant, being dissatisfied by the judgment dated 4th January, 2019 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur upholding the conviction of the appellant for the offence under Section 307 Indian Penal Code(hereinafter being referred to as “IPC”) and directed him to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/-

with clause of sufferance in default of three months' rigorous imprisonment, has preferred this instant appeal.

3. The case of the prosecution is that Gajanan Kute complainant lodged oral report Exhibit-49 with Police Station Ansing on 11th May, 2016 contending that Chintaman Dange is his maternal uncle and very active in social work. Previously the appellant had a quarrel with Chintaman Dange (injured) because of unlawful construction raised on Nal Saheb Baba Darga prior to 4-5 months to the incident. On 11th May, 2016, when a Sandal procession at Ansing reached Gandhi Chowk at about 7.30 p.m., unknown persons entered into the procession and the present appellant along with his two other associates with a sharp-edged weapon stabbed on the stomach of Chintaman Dange with intent to kill him. The complainant took the injured to the hospital for treatment. On his report, P.S.O. Ansing registered Crime No.80/2016 for an offence under Section 307 read with Section 34 IPC against the accused appellant and other accused persons vide Exhibit 50. After investigation, the charge-sheet was filed under Section 307 read with Section 34 IPC. After framing of charge for the afore-stated offence, the appellant faced the trial.

4. Relying on the testimony of PW 7 Chintaman Dange (injured victim) and of the treating Doctor Arvind Kisanrao Adhe (PW11) which was held to be unimpeachable and stellar, the learned trial Judge held the appellant guilty and convicted him for offence punishable under Section 307 IPC to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- with default to suffer further three months' rigorous imprisonment by a judgment dated 23rd February, 2018.

5. Unsatisfied by the judgment of the learned trial Judge dated 23rd February 2018, the accused preferred appeal before the Nagpur Bench of High Court of Bombay which, after hearing the parties came to be dismissed by the judgment impugned dated 4th January, 2019 assailed in the instant appeal.

6. The record of the case elicits that the finding of both the Courts are concurrent and without fault. The appellant has not been able to mount an effective challenge founded upon a question of law and the learned counsel has very fairly restricted his prayer qua reduction of sentence only which reveals from the order passed by this Court on 14th February, 2020. By a further order dated 30th July 2021, PW 7

Chintaman Dange(injured victim) was directed to be impleaded as party respondent. Pursuant thereto, he was impleaded as party to the present appeal.

7. A joint affidavit has been filed during the pendency of the proceedings by the wife of the accused appellant and PW 7 Chintaman Dange(injured victim) and it has been stated that they are residing in the same village and this unforeseen incident has occurred on account of some misconception and are residing peacefully even after the unfortunate incident has taken place. The injured victim has come forward with the request that, as the families have settled their disputes and almost half of the sentence has been undergone by the appellant, it may be considered to be sufficient in due compliance of the judgment impugned upholding conviction under Section 307 IPC.

8. We have heard learned counsel for the parties and also the learned counsel for Chintaman Dange(injured victim-respondent no. 2) and with their assistance perused the material available on record.

9. The joint affidavit placed on record makes it clear that the parties, on the advice of their elders, entered into an amicable

settlement. The appellant has apologized for his fault and has taken responsibility for his action and has maturely sought forgiveness from the victim. In return, the victim has also voluntarily accepted the apology while considering the age of the appellant at the time of the incident and has forgiven him and has come forward without any reservation to settle the dispute.

10. Even during the course of arguments, learned counsel for the injured victim has reiterated the same while making his submissions.

11. In almost the same circumstances which have been noticed by us, a three Judge Bench of this Court in a recent judgment in **Murali Vs. State represented by Inspector of Police**¹, where the parties decided to forgive their past and live amicably, this Court has come to their rescue by interfering in the quantum of sentence which obviously is not compoundable under Section 320 Cr.P.C. but has interfered since there is no minimum sentence prescribed. This Court in **Murali**(supra), has taken note of the judgment of this Court in **Ram Pujan and Others Vs. State of U.P.**² which was further

¹ 2021(1) SCC 726

² 1973(2) SCC 456

followed by this Court in **Ishwar Singh Vs. State of M.P.**³ and the later decisions as referred to in paras 11 and 12 of the judgment has taken note of the compromise between the parties to reduce the sentence of the convicts even in serious non-compoundable offences.

The relevant paras are as follows:-

“11. In later decisions including in *Ram Lal v. State of J&K* (1999) 2 SCC 213; *Bankat v. State of Maharashtra* (2005) 1 SCC 343; *Mohar Singh v. State of Rajasthan* (2015) 11 SCC 226; *Nanda Gopalan v. State of Kerala* (2015) 11 SCC 137; *Shankar v. State of Maharashtra* (2019) 5 SCC 166, this Court has taken note of the compromise between parties to reduce the sentence of the convicts even in serious non-compoundable offences.

12. Given this position of law and the peculiar circumstances arising out of subsequent events, we are of the considered opinion that it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants. We say so because: *first*, the parties to the dispute have mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, this is a fit case for reduction of sentence.”

12. Taking into consideration the facts of the instant case and the circumstances arising out of the subsequent events, in our opinion, it is a fit case to take a sympathetic view and reconsider the quantum of sentence awarded to the appellant. We have recorded our

³ 2008(15) SCC 667

satisfaction, based on the reasons, that the parties to the dispute have mutually settled their disputes and buried their past.

13. The joint affidavit inspires confidence that the apology as tendered by the appellant has voluntarily been accepted given the efflux of time and is not a result of any coercion or inducement. Considering that they are residing in the same village and are peacefully residing after the uncalled for incident has taken place, in our view, this appears to be a fit case for reduction of sentence.

14. Considering the overall facts on record and other mitigating factors and circumstances in which a crime has been committed including the nature of injury, period during which he remained under medical treatment, mental agony which the victim suffered and also the compromise entered into between the parties, while upholding conviction under Section 307 IPC, we deem it appropriate to reduce the quantum of sentence imposed on the appellant to five years rigorous imprisonment and to pay a fine of Rs. 10,000/- and in default of payment of fine shall suffer further three months' rigorous imprisonment. Ordered accordingly.

15. The appeal is, therefore, partly allowed.
16. Pending application(s), if any, stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(ABHAY S. OKA)

NEW DELHI
SEPTEMBER 13, 2021