

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL NO. 34 OF 2013
WITH
CRIMINAL WRIT PETITION NO. 37 OF 2015****CRIMINAL APPEAL NO. 34 OF 2013**

Mr. Ubaldo Fernandes,
S/o Anton Pascoal Fernandes,
r/o H. No. 1145/B,
Horta, Baradi, Velim,
Salcete, Goa.

... Appellant
(Original Accused)

Versus

State,
Through P.P.,
Hon'ble High Court of Bombay
at Panaji, Goa.

... Respondent

Shri Siddesh Shet, Advocate for the Appellant/Original Accused.

Shri S.R. Rivankar, Public Prosecutor for the Respondent.

CRIMINAL WRIT PETITION NO. 37 OF 2015

Mrs. Agnes Fernandes,
Indian National,
46 years of age,
Wife of Mr. Ubaldo Fernandes,
Permanent R/o H. No. 11/45,
Barradi, Horta,
Velim, Goa.

... Petitioner

Versus

1. State,
Public Prosecutor,
High Court of Bombay
at Panaji, Goa.
 2. Mr. Ubaldo Fernandes,
s/o Anton Pascoal Fernandes,
Indian National, 51 years of age,
Permanent R/o H. No. 11/45,
Barradi, Horta,
Velim, Goa.
- ... Respondents

Shri Anoop Gaonkar, Advocate for the Petitioner.

Shri S.R. Rivankar, Public Prosecutor for the Respondent No. 1.

Shri Siddesh Shet, Advocate for the Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE : 15th APRIL, 2015

ORAL JUDGMENT:

Both these matters can be disposed of by this common judgment.

2. Rule in Criminal Writ Petition No. 37/2015. Rule made returnable forthwith. Shri Rivankar, learned Public Prosecutor waives

notice for respondent no. 1 and Shri Shet, learned Counsel waives notice for respondent no. 2. Taken up for final disposal with the consent of the parties.

2. There was an incident of assault which occurred on 07.08.2010 at 19:45 hours at Horta, Baradi, Velim, Salcete, Goa in which it was alleged that the appellant in Criminal Appeal No. 34/2013, who is the respondent no. 2 in Criminal Writ Petition No. 37/2015 had assaulted his wife-Agnes Fernandes, by knife causing multiple injuries. It was also alleged that the incident took place at the house of the brother of the complainant-Agnes Fernandes. According to the prosecution one Blacksy Pinto, who happens to be the sister-in-law of the complainant had tried to intervene in the incident, in which she also was allegedly assaulted. The matter went to trial in Sessions Case No. 35/2010, before the Additional Sessions Judge, South Goa, Margao, and by judgment of conviction and sentence dated 16.05.2013/18.05.2013, the learned Sessions Judge found that the offence so far as complainant-Agnes Fernandes is concerned, would fall under Section 326 of I.P.C. and as regards Blacksy Pinto, it would fall under Section 324 of I.P.C. In such circumstances, the appellant-Ubaldo Fernandes came to be sentenced

for the offence punishable under Section 324 of I.P.C., for simple imprisonment for a period of three months and to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for one month. As regards the offence under Section 326 of I.P.C., the petitioner is sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.10,000/- and in default to undergo simple imprisonment for three months. The sentences have been directed to run consecutively. The appellant has challenged the said judgment and order of conviction in Criminal Appeal No. 34/2013.

3. It appears that the parties have settled their dispute which has led petitioner/injured to file Criminal Writ Petition No. 37/2015, for compounding the offences punishable under Sections 324 and 326 of I.P.C., by quashing and setting aside the judgment of conviction and sentence dated 16.05.2013/18.05.2013, passed in Sessions Case No. 35/2010.

4. I have heard Shri Gaonkar, learned Counsel for the petitioner, Shri Rivankar, learned Public Prosecutor for the Respondent-State and Shri Shet, learned Counsel for the respondent

no. 2/appellant in Criminal Appeal No. 34/2013.

5. Apart from the complainant-Agnes Fernandes, the other injured namely, Blacksy Pinto has also filed an affidavit stating that the matter may be compounded. The learned Counsel for the petitioner has placed reliance on the decision in the case of ***Yogendra Yadav and Others Vs. State of Jharkhand and Another***, reported in ***AIR 2014 SC 3055***, in which the Hon'ble Supreme Court had allowed the quashing, when it was found that the dispute was personal in nature and did not affect public peace. It has been held that it would lead to harmonious relations between the two sides. The learned Counsel has also placed reliance on the decision in the case of ***B.S. Joshi and Others Vs. State of Harayan and Another***, reported in ***(2003) 4 SCC 675***, in which it has been *inter alia* held that the powers under Section 482 of the Criminal Procedure Code are wide and in appropriate case the Court encourages genuine settlement of matrimonial disputes.

6. On hearing the learned Counsel for the parties and on perusal of the record it appears that the incident had arisen out of a private dispute. The parties are closely related. The incident has

occurred at house of the brother of the complainant-Agnes Fernandes and there is no public law element involved. Considering the overall circumstances, the nature of the allegations and having regard to the fact that the settlement would lead to better relations between the parties, the prayer needs to be granted.

7. In the result, the following order is passed:
- (a) Criminal Appeal No. 34/2013 and Criminal Writ Petition No. 37/2015 are allowed.
 - (b) The impugned judgment of conviction and sentence dated 16.05.2013/18.05.2013 is hereby quashed and set aside.
 - (c) The appellant in Criminal Appeal No. 34/2013 is acquitted of the offences punishable under Sections 324 and 326 of I.P.C.
 - (d) The bail bonds of the appellant in Criminal Appeal No. 34/2013 stand cancelled.
 - (e) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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