

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.49 OF 2000

Mahadeo Dyanoba Kadam and ors .. Appellants

Versus

The State of Maharashtra & ors .. Respondents

Mr.R.S.Kate, Advocate for the appellants.

Mrs.S.Gajare-Dhumal, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 4th AUGUST, 2015

ORAL JUDGMENT :

1 The appellants have been convicted of an offence punishable under section 326 of the IPC read with section 34 of the IPC by the learned Addl. Sessions Judge by a judgment and order dated 21st January 2000. The appellants have been sentenced to suffer Rigorous Imprisonment for 5(five) years each, and to pay a fine of Rs.2,000/- each in default to suffer Simple Imprisonment for 6(six) months. Being aggrieved by their conviction and the sentence imposed upon them by the learned Addl. Sessions Judge, the appellants have approached this Court.

2 When the Appeal came up for hearing, it was submitted before me that the matter had been settled amicably between the appellants and the victims of the offence allegedly

committed by them i.e. the First Informant Uttam Patil and his sister Sheshabai. An application seeking leave to compound the offence in question signed by the counsel for the parties and the parties themselves, was filed before this Court (Criminal Application No.922/14). The said application has been rejected, in spite of having ascertained the fact of the settlement between the parties, to be true, only because the offence punishable under section 326 of the IPC, is not compoundable.

3 The learned counsel for the appellants submits that in the circumstances he does not challenge the correctness of the order of conviction of the appellants, as recorded by the Addl. Sessions Judge. He submits that he only seeks the reduction of the sentences imposed upon the appellants, to the period already undergone in view of the clear and categorical settlement arrived at by and between the appellants and the injured victims.

4 In view of this concession, I have not examined the correctness and legality of the order of conviction recorded by the Additional Session Judge.

5 As aforesaid, while deciding the Criminal Application No.922/14 for leave to compound the offence, I have ascertained the fact that the parties have indeed settled their dispute amicably. Though compounding of a non-compoundable offence not being permissible, the said application was rejected, the fact that the parties have settled the dispute, can be taken into consideration for the purpose of reducing the sentence imposed upon the appellants by the trial Court.

6. I have gone through the nature of injuries sustained by the First Informant Uttam Patil and Sheshabai. I have also heard the learned counsel for the First Informant – Uttam Patil and Sheshabai. The learned counsel also submits that in view of the settlement arrived at between the parties, the victims have no objection if the sentence imposed upon the appellants, is reduced.

7 I have also heard the learned APP who submits that in view of the compromise arrived at between the parties, the sentence may be reduced.

8 I find that the appellants were already in custody for a period of 8 months during the investigation and trial of the case and the period after the trial.

9 Considering all the relevant aspects of the matter, I think it fit to reduce the substantive sentence imposed upon the appellants to the period already undergone by them. However, I am inclined to increase the sentence of fine and direct a substantial part thereof to be paid to the injured Sheshabai.

10 The conviction of the appellants with respect to the offence punishable under section 326 of the IPC, is maintained.

11 However, the substantive sentences imposed upon them is reduced are the period already undergone.

12 The sentence of fine imposed upon them is enhanced. The appellants shall pay a fine of Rs.5,000/- each, or in default to suffer SI for a period of three months.

13 The fine shall be deposited by the appellants in the trial Court within a period of four weeks from today. If the fine is realized, an amount of Rs.7,500/- therefrom shall be paid to the injured Sheshabai as compensation.

14 The amount of fine, if any, already deposited by the appellants in accordance with the sentence imposed by the Addl. Sessions Judge, be adjusted towards the amount of fine that they would be required to pay in accordance with the above order.

15 Appeal is disposed of in the aforesaid terms.

(ABHAY M.THIPSAY, J)