

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 118 OF 2016

Dadarao s/o Atmaram Kale,
Age : 45 years, Occu. Agri.,
R/o Neknoor, Tq. and Dist. Beed

PETITIONER

VERSUS

1. The State of Maharashtra

2. Bajirao s/o Pandharinath Karande,
Age : 6 years, Occu. Agri.,
R/o Neknoor, Tq. & Dist. Beed

RESPONDENTS

Mr. S.J. Salunke, Advocate for the petitioner
Mr. R.V. Dasalkar, A.P.P. for the respondent-State
Mr. S.G. Kawade, Advocate for respondent No. 2

CORAM : M.T. JOSHI, J.

DATE : 24/02/2016

ORAL ORDER :

1. **Rule.** Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. Aggrieved by the decision of the learned Sessions Judge, Beed dated 16th January, 2016 rendered in Criminal Appeal No. 85/2014, refusing to record compounding of the offences in the appeal, the present writ petition is preferred by the original accused

(appellant before the Sessions Court)

3. The respondent No. 2 – the complainant-victim had filed the affidavit before the learned Sessions Judge as well in this court thereby communicating that he wants to settle the matter as they are the residents of the same village.

4. The prosecution case would show that as certain crowd had gathered in the village as dead-body of an unknown lady was found, the complainant went to see as to what had occurred. At that time, the present petitioner/accused questioned him as to why he had come there. He had cricket bat in his hand. He hit the complainant with the said bat. On the basis of the complaint, the crime came to be registered and ultimately, the learned Judicial Magistrate First Class convicted the present petitioner for the offence punishable under section 326 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for a period of one year and to pay fine of Rs. 5000/- for the said offence.

5. Learned counsel for the petitioner submits that

even the medical evidence would go to show that the offence punishable under section 326 of the I.P. Code was not made out. Besides, considering the fact that the parties have arrived at a settlement, the present writ petition may be allowed and the criminal appeal filed before the Sessions Court may be disposed of.

6. Learned A.P.P. opposed the petition. He submitted that the complainant was grievously injured in the incident.

7. We have the statement of the Medical Officer – PW8 Dr. Keshav Tandale, coupled with the injury certificate passed by him at Exhibit-60. The injury certificate would show the following injuries on the person of the complainant.

- (i) C/W scalp – 3 cms. long
- (ii) Multiple contusions – unvisible
- (iii) Contusion – 3 x 3 cms.

8. Section 320 of Indian Penal Code, defines grievous hurt as under :-

"320. Grievous hurt. – The following kinds of hurt only are designated as "grievous":–

First – Emasculation.

Secondly – Permanent privation of the sight of either eye.

Thirdly – Permanent privation of the hearing of either ear,

Fourthly – Privation of any member or joint.

Fifthly – Destruction or permanent impairing of the powers of any member or joint.

Sixthly – Permanent disfiguration of the head or face.

Seventhly – Fracture or dislocation of a bone or tooth.

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

The statement of the Medical Officer would not show that even eighth description given above would be applicable. The offence therefore would not be punishable under section 326 of the Indian Penal Code.

9. Besides this, taking into consideration the motive and the background of the incident, in my view, the offence needs to be compounded. Hence, the

following order.

10. The criminal writ petition is allowed. The offence stands compounded. Consequently, the judgement and order dated 2nd July, 2014, passed by the learned Judicial Magistrate First Class, Beed in R.C.C. No. 44 of 2011 is hereby set aside.

11. In view of above order, the learned Sessions Judge, Beed is directed to dispose of Criminal Appeal No. 85/2014 pending before him.

12. The Rule is made absolute in above terms.

[M.T. JOSHI]
JUDGE

npj/criwp118-2016