

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.72 OF 2002

1. Vaijnath s/o. Ramrao Jogdand
 Age: 33 years, Occu.: Nil,
 R/o. Parbhani-Wangi Road,
 Ambikanagar, Dist. Parbhani.
2. Anita w/o. Jagannath Shahane,
 Age: 30 years, Occu.: Presently Nil,
 R/o. Garkheda Area,
 Vijaynagar, Aurangabad.

**...APPELLANTS
(Orig. Accused)**

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. Joydeep Chatterji, Advocate for the Appellants.
Mr. K.D.Mundhe, APP for the Respondent State.
Mr. P.S.Pawar, Advocate, for original complainant.
...

**CORAM: P.R. BORA, J.
DATE : 04/04/2018**

ORAL JUDGMENT :

1. The present appeal was heard on 19th March, 2018 and the Judgment was also dictated in the open Court. However, subsequently, on request of learned A.P.P. Shri Mundhe, the matter was listed for re-hearing on 20th March, 2018. On the said date, it was the contention of the learned A.P.P. that the State intends to verify whether the affidavit filed by original complainant Jagannath Kishanrao Shahane is filed

under coercion or by his free will. Accordingly, the matter was listed for re-hearing on 2nd of April, 2018. Due to paucity of time, the matter could not be heard on 2nd of April, 2018, however, on 2nd of April, 2018, the learned A.P.P. placed on record report received from Police Station, Parbhani, and the same was taken on record and the matter was adjourned to today.

2. Today, when the appeal was taken up for hearing, the learned Counsel appearing for the appellant submitted that in view of the subsequent developments occurred, the appellants are not contesting their conviction for the offense under Section 307 read with Section 34 of IPC and are only praying for reduction of sentence.

3. The appellants have filed the present appeal against the judgment and order passed by the Additional Sessions Judge at Kopergaon in Sessions Case No.14/2001 decided on 31st of December, 2001. Vide the impugned Judgment the appellants have been convicted for the offense punishable under Section 307 read with Section 34 of IPC and are sentenced to suffer rigorous imprisonment for seven years with fine of Rs.500/- each; in default, to suffer rigorous

imprisonment for six months each.

4. Learned Counsel Shri Chatterji submitted that, in the meanwhile, the dispute between appellant no.2 and her husband has been successfully resolved and appellant no.2 is residing with her husband since last about 14 years. Learned Counsel further brought to my notice that the husband of appellant no.2, on whose complaint the criminal prosecution was initiated against the appellants, has filed an application through Advocate Shri P.S.Pawar contending therein that he has decided to forgive the present appellants for the acts done by them. Learned Counsel further brought to my notice that in the said application, which is sworn on affidavit by said Jagannath Kishanrao Shahane it is stated that, appellant no.2 is residing with him after the bail was granted to her by the High Court in Criminal Appeal No.72/2002. It is further contended in the said application that by passage of time and, so also, having regard to the fact that the children born from the wedlock between appellant no.2 and said Jagannath have become major and of marriageable age, he has decided to forgive the present appellants for the acts done by them. It is further contended that he may not have any objection if the appellants are sentenced to the period already undergone for

the offense proved against them. Learned Counsel submitted that in view of the subsequent developments as such, now the appellants are restricting their case only to the quantum of punishment and not seeking any other relief i.e. of acquittal from the charges levelled against them. Learned Counsel submitted that the appellants have undergone the punishment of about eighteen months.

5. Mr.Joydeep Chatterji, learned Counsel for appellants, placing reliance on the judgment of the learned Single Judge of this Court in the case of Chandrakant s/o Gajaba Raut and anr. Vs. State of Maharashtra (2008 ALL MR (Cri.) 759), and one more judgment of the learned Single Judge of this Court in the case of Bhagwan Trimbak Garde & Ors. Vs. State of Maharashtra & Ors. (2006 ALL MR (Cri) 785), submitted that in both the aforesaid matters, the appellants therein were convicted for the offense punishable under Section 307 of IPC and similar sentence was awarded to the said appellants. Learned Counsel, taking me through the discussion made in the aforesaid judgments submitted that having regard to the subsequent facts brought on record by the parties therein, in both the matters, the appellants therein were sentenced to the period already undergone by them. Learned

Counsel submitted that in the case of Chandrakant s/o Gujaba Raut & Anr., cited supra, learned Judge has relied upon the judgment in the case of Hasi Mohan Barman & Anr. Vs. State of Assam & Anr. (2007 AIR SCW 7123). Learned Counsel submitted that the facts involved in the said matter and as are involved in the instant matter are somewhat similar. Learned Counsel submitted that in the present matter also, there had been some dispute between appellant no.2 and her husband, however, subsequently, the dispute has been resolved and appellant no.2, since last 14 years, is residing with her husband on whose complaint criminal prosecution was initiated against her and appellant no.1. Learned Counsel submits that in view of the affidavit filed on record by the original complainant, namely, Jagannath, leniency may be shown to both the appellants and the sentence awarded by the trial Court to both these appellants be reduced to the sentence already undergone.

6. Shri Mundhe, learned A.P.P., has opposed the submissions made on behalf of the appellants. Learned A.P.P. Submitted that if the facts in the present case are considered and more particularly the way the assaults were made on complainant Jagannath, there is hardly any scope for showing

any leniency to the appellants herein. Learned A.P.P. Submitted that the facts in the cases which are relied upon by the appellants were quite different and, as such, the view taken in the said judgments may not be possible to be taken in the present matter. Learned A.P.P. Submitted that in the peculiar facts of the present case the request made by the appellants does not deserve any consideration.

7. I have carefully considered the submissions made on behalf of the appellants and on behalf of the respondent State. I have perused the affidavit filed by Jagannath Kishanrao Shahane, original complainant, on whose complaint criminal prosecution was initiated against the appellants and ultimately both were convicted by the trial Court for the offense punishable under Section 307 read with Section 34 of IPC. In his affidavit, complainant Jagannath has specifically averred that he has decided to forgive the appellants. It is further contended in the said affidavit that present appellant no.2 is residing with him since last about 14 years after she was released on bail by this Court in the present appeal. It is further contended that in view of the fact that he and appellant no.2 are residing together since last 14 years and further fact that the children born out of the wedlock between him and

appellant no.2 are now major and are of marriageable age, he has decided to forgive the respondents i.e. present appellants. It is further contended that he may not have any objection if the sentence imposed upon the appellants is reduced to the sentence already undergone by them. It has to be stated that on 20th of March, 2018, the complainant was present before the Court and the contents of the affidavit were verified by the Court. Moreover, Advocate Shri Pawar confirmed the facts stated by the learned Counsel for the appellants that appellant no.2 and the complainant are residing together since last fourteen years and that no dispute arose in between them in the said period. Advocate Shri Pawar submitted that complainant Jagannath has decided to forgive the appellants and has no objection if the appellants are released on the sentence already undergone by them.

8. As noted hereinabove, the appeal was listed for re-hearing on the request of learned A.P.P. Shri Mundhe since he was to ascertain independently whether affidavit has been filed by the complainant Jagannath Shahane by his free will or he was pressurized and compelled to file such affidavit and to further verify veracity of the fact stated before the Court that complainant Jagannath and appellant no.2 are residing together

since last 14 years. The report, which has been placed on record by learned AGP Shri Mundhe, which is received to the Office of the Government Pleader from Police Station Officer, Manwat, district Parbhani, reveals that, according to the enquiries made by the Police machinery, complainant and appellant no.2 are jointly residing and presently there is no dispute between them. In view of the aforesaid report, the learned A.P.P. now does not have any doubt in his mind that complainant Shahane has voluntarily submitted the affidavit under his free will.

9. In the case of Chandrakant s/o Gujaba Raut, cited supra the victim was the wife and the accused was the husband. Though, in the present matter, the position is vice versa, the fact remains that the complainant has now decided to forgive the appellants for the acts allegedly done by them. In the case of Chandrakant Gujaba Raut, (cited supra), it was also the observation of the learned Single judge that the broken marriage was being re-joined as a result of settlement between the spouses. In the present matter also, the settlement has resulted in re-union of the original complainant and the present appellant no.2. It further cannot be ignored that during pendency of the appeal immediately after grant of

bail to the present appellant no.2, she and the complainant had started residing with each other and are residing with each other since last fourteen years. In the circumstances, it does not appear to me that it may be of any use now to look into the allegations which were made and held to have been proved during the course of the trial. In the aforesaid circumstances, I do not see any difficulty to follow the same course as was followed by this court in the cited two judgments. Admittedly, the offense under Section 307 of IPC is not compoundable, however, as has been observed by the Hon'ble Apex Court in the case of Hasi Mohan Barman & Anr., (cited supra), which has been relied upon by the learned Single judge of this Court while deciding the case of Chandrakant s/o Gujaba Raut, (sited supra), the factum of compromise arrived at between the parties can certainly be used for reduction of sentence.

10. It is not in dispute that the appellants have already undergone the sentence of more than 18 months. As elaborately discussed hereinabove, there has been reconciliation amongst the parties i.e. complainant Jagannath Shahane and the appellants. The relations between the original complainant and the appellants have become cordial and appellant no.2 is residing with the complainant since last

about 14 years. As noted hereinabove, complainant Shahane has averred on oath that he has decided to forgive the appellants for the acts allegedly done by them. The circumstances pointed out as above do persuade me to take a lenient view in regard to the sentence.

11. Having regard to the aforesaid circumstances, I am satisfied that the ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine. Consequently, while confirming the conviction of the appellants accused for the offense punishable under Section 307 read with Section 34 of IPC, the substantive sentence awarded to them by the Court below is reduced to the period already undergone. Fine amount and the default stipulation remain as it is.

Criminal Appeal (No.72/2002) is, thus, partly allowed, to the extent as above.

Pending Criminal Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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