

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

CRIMINAL APPEAL NO.634 OF 2012

1. Tulshiram s/o Sitaram Shekokar,
Age : 63 years, Occu : Agriculture,
R/o. Village Ghankheda, Tal. Bodhwad,
District : Jalgaon
2. Rajendra s/o Tulshiram Shekokar,
Age : 30 years, Occu & R/o. As above. .. Appellants
(Orig. Accused
Nos.1 & 2)

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
Bodhwad Police Station, Bodhwad,
Tal. Bodhwad, District : Jalgaon.
2. Balu s/o. Tryambak Shekokar
Age : 50 years, Occu : Agriculture,
R/o. Village Ghankheda, Tal. Bodhwad,
District : Jalgaon ..Respondents
(No.1-Original Complainant &
No.2- Informant-Injured)

.....

Shri R.S. Deshmukh, Advocate for appellants
Shri S.P. Sonpawale, APP for Respondent No.1 – State
Shri N.R. Dayma, Advocate for Respondent No.2

.....

CORAM : PR. BORA, J.
DATED : 04.05.2018

ORAL JUDGMENT :

1. The appellants/accused have filed the present appeal

against the Judgment and order dated 31st October, 2012 passed by the Additional Sessions Judge, Jalgaon in Session Trial No.14 of 2008. The appellants have been convicted by the trial Court in the aforesaid Sessions Case for the offence under Section 326 r.w. 34 of Indian Penal code (hereinafter referred to as the 'I.P.C.') and have been sentenced to suffer Rigorous Imprisonment for 5 years and to pay fine of Rs.8,000/- each, and in default of payment of fine amount to suffer Simple Imprisonment for further period of 3 months each.

2. It was the case of the prosecution that, the accused persons in furtherance of their common intention made an assault on one Balu Tryambak Shekokar on 11.09.2007 with deadly weapon and attempted to cause his murder.

3. Informant Balu Shekokar was seriously injured in the said assault and was required to be hospitalized. The FIR was registered on the complaint made by said Balu Shekokar and the investigation was set in motion. After completing the investigation, the charge-sheet was filed against the appellants

for the offences under Section 307 r.w. 34 of the I.P.C. Appellants are hereinafter referred to as 'accused'.

4. In order to prove the guilt of the accused, seven witnesses were examined by the prosecution. The defence of the accused was of total denial. Learned Additional Sessions Judge after having assessed the oral and documentary evidence brought on record by the prosecution held the accused guilty for the offence under Section 326 r.w. 34 of I.P.C. and sentenced them to suffer the punishment as noted herein above. Aggrieved by, the accused have preferred the present appeal.

5. In the memo of appeal, the accused have raised several grounds in exception to the impugned Judgment and order. According to the accused though no cogent and sufficient evidence has come on record proving the guilt of the accused beyond reasonable doubts, the trial Court has erroneously held them guilty for the offence under Section 326 of I.P.C. However, when the appeal was taken up for hearing on 11.04.2018, the appellants filed Criminal Application No.1058 of 2018 thereby

praying for compounding the offence proved against them and consequently to acquit them of the said offence. On 3rd May, 2018 the affidavit came to be filed sworn by informant Balu Tryambak Shekokar wherein he has contended that, the dispute between him and the accused has been amicably settled with the intervention of the elderly relatives and friends and as such, he may not have any objection for compounding the offence and acquit the accused persons from the offence under Section 326 r.w. 34 of I.P.C.

6. Today, when the matter was called out for hearing, Shri R.S. Deshmukh, learned Counsel appearing for the appellants submitted that, on instructions from the accused, he is restricting his arguments only to the quantum of sentence since the dispute between the original informant and the accused has been amicably settled. Learned Counsel submitted that, informant Balu Shekokar has filed an affidavit in that regard and has endorsed his 'no objection' for compounding the offence. Learned Counsel submitted that if the Court is not inclined to allow the request for compounding, the accused

prays for reducing the punishment imposed upon them by the trial Court to the sentence already undergone.

7. The learned Counsel inviting my attention to the contents of the affidavit sworn by informant Balu Shekokar submitted that, he has unambiguously averred that, his dispute with the accused persons has been amicably settled and they are now happily and peacefully leading their life in the same village and are maintaining cordial relations with each other. Learned Counsel submitted that, informant Balu Shekokar has also mentioned in his affidavit that, with the intervention of their relatives and the common friends, he and the accused persons have amicably settled their dispute and have resolved to live happy and peaceful future life and to maintain cordial relations with each other.

8. Learned Counsel further submitted that, the informant and the accused are admittedly close relatives of each other. Learned Counsel submitted that, initially after their arrest on 12.09.2007, the accused were released on bail vide order dated 09.10.2007 and had thus remained behind the bars for

the period about a month. Learned Counsel further submitted that, after pronouncement of the Judgment by the learned Additional Sessions Judge, both the accused were taken in custody on the same day i.e. on 31st October, 2012 and remained behind the bars till their release by the High Court vide order dated 19th November, 2012. Learned Counsel submitted that, the accused had, thus, undergone the sentence for the period about 2 months.

9. Learned Counsel further submitted that, in view of the fact that the dispute which had given rise for filing a complaint against the present accused by the informant since has been resolved, the request of the accused deserves to be considered. Learned Counsel further submitted that, the accused are not the habitual offenders and do not have criminal antecedents. Learned Counsel, therefore, prayed for modifying the order passed by the learned Additional Sessions Judge thereby reducing the period of sentence to already undergone.

10. Learned APP Shri S.P. Sonpawale opposed for acceptance of the request so made by the appellants. Learned

APP submitted that, the offence proved against the accused under Section 326 of I.P.C. is a serious offence, for which, sentence prescribed is imprisonment for life or imprisonment of either description for a term which may extend to 10 years. Learned APP submitted that, it is well settled that, just and appropriate sentence has to be imposed keeping in mind the proportion between crime and punishment. Learned APP further submitted that, considering the evidence on record and the entire circumstances, the trial Court has awarded the adequate punishment to the appellants and no interference is required in the punishment so imposed.

11. I have given due consideration to the submissions made by learned Counsel appearing for the appellants and learned APP appearing for the State. I have also perused the impugned Judgment and the evidence on record. As I noted herein above, the appellants though have filed an application praying for compounding the offence proved against them, the said has not been pressed. It appears to me that, learned Counsel rightly did not press the said application in view of the

fact that, the offence under Section 326 of I.P.C. is not made compoundable even with the permission of the Court.

12. In the case of **Nanda Gopalan Vs. State of Kerala, AIR 2015 (Supp) 1256 Supreme Court**, similar issue was for consideration of the Hon'ble Apex Court. In the said case also, the petitioners therein were convicted for the offence under Sections 324 and 326 of I.P.C. Submission was made before the Hon'ble Apex Court on their behalf that, though the offence under Section 326 of I.P.C. could not be compounded, the compromise could be taken into account for reducing the sentence. The submission so made was opposed by learned Counsel for the State. After having considered the aforesaid submissions, the Hon'ble Apex Court in para - 9 of the said Judgment held as under :

“9. While we have no difficulty in holding that taking into account the compromise between the parties particularly when they are close relatives, reduction in sentence can be ordered, we do not find any ground to interfere with the conviction of the appellant.”

The Hon'ble Apex Court eventually reduced the sentence of imprisonment of the appellant to the period already undergone

by increasing the amount of compensation.

13. It appears to me that, in view of the aforesaid Judgment of the Hon'ble Apex Court, there may not be any difficulty in positively considering the request made by the appellants to reduce the sentence imposed upon them by the trial Court.

14. It is not in dispute that, the accused and the informant are the close relatives of each other. On perusal of the facts involved in the matter, it is revealed that, the quarrel had taken place between the informant and the accused on a very trifling issue. It is further revealed that, though the charge-sheet was filed against the accused for the offence under Section 307 of I.P.C., the trial Court on assessment of the evidence on record did not hold the accused guilty for the offence under Section 307 of I.P.C; but held the accused guilty for the offence under Section 326 of I.P.C.

15. From the contents of the affidavit filed on record by

the original complainant namely Balu Shekokar, it is revealed that, by passage of time the relations between him and the accused have improved. Informant Balu Shekokar has specifically contended in his affidavit that, with the intervention of the elderly relatives and common friends, the informant as well as the accused have decided to put an end to the dispute between them and have resolved to live happy and peaceful future life and to maintain cordial relations with each other. It is significant to note that, informant Balu Shekokar has endorsed his clear 'no objection' even for setting aside the order of conviction passed against the accused and to give clear acquittal in their favour. As was submitted by learned Counsel for the appellants, there are no criminal antecedents to the appellants. Appellants are not the habitual offenders. There is nothing on record to show that, except the present case, any other criminal case either was filed against the accused or is pending against them.

16. In the circumstances as aforesaid, I am inclined to accept the request of the appellants / accused to reduce the

sentence imposed upon them to the sentence already undergone by them. While reducing the period of substantive sentence to the period already undergone, it appears to me that, a balance will have to be struck by appropriately increasing the amount of fine which, in turn, can be directed to be paid to the victim. The trial Court has imposed the fine of Rs.8,000/- each upon the appellants / accused. In the facts and circumstances of the case, I deem it appropriate to enhance the said amount to Rs.25,000/- each. In the result, the following order is passed.

ORDER

(i) The conviction of the appellants / accused for the offence under Section 326 read with 34 of I.P.C. is maintained :

However, the sentence imposed upon them by the trial Court is modified as under :

(a) Accused namely Tulshiram Sitaram Shekokar & Rajendra Tulshiram Shekokar are sentenced to suffer imprisonment of the period already undergone and to pay fine of Rs.25,000/- each, and in default of payment of fine amount to undergo simple imprisonment for two months each.

- (b) Fine amount, if paid by the accused, Rs.45,000/- out of the same shall be paid to victim Balu Tryambak Shekokar by way of compensation.

. The Criminal Appeal thus stands partly allowed.

- (ii) In view of the decision rendered in Criminal Appeal, Criminal Application No.1058 of 2018 stands disposed of.

(P.R. BORA)
JUDGE