

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.83 OF 2005

1. Vishnu Shantaram Patil,
Age. 51 Yrs., occu. Business,
(Abated as per Court's Order
dt. 19/04/2018)
2. Ajay Vishnu Patil,
Age 19 Yrs., Occu. Business,
Both r/o. House No.1400,
Khonigaon, Tal.Bhivandi,
Dist.Thane. ... **Appellants**
V/s.
The State of Maharashtra, ... **Respondent**

WITH
CRIMINAL APPLICATION NO.113 OF 2018
IN
CRIMINAL APPEAL NO.83 OF 2005

Ajay Vishnu Patil,
Age 32 Yrs.R/o. House No.1400,
Khonigaon, Tal.Bhivandi,
Dist.Thane. ... **Applicant/Appellant No.2**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.R.D.Suryawanshi i/b. Mr.Pramod R. Arjunwadkar, Advocate
for the Applicant/Appellant No.2.

Mr.Abhijeet Kanderkar with Mr.Devendra Pawar, Advocate for the
Original Complainant/Tukaram Bagal and Liladhar Bagal.
Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 10th DECEMBER 2018.

ORAL JUDGMENT :

1 Initially, by this appeal, both the appellants/accused Nos.1 and 2, who had been convicted of the offences punishable under Section 325 read with Section 34 and appellant/accused No.2 Ajay Vishnu Patil, who had been convicted of the offence punishable under Section 324 of the Indian Penal Code by the learned Adhoc-Additional Sessions Judge, Thane had challenged the said Judgment and Order of conviction dated 15/01/2005 passed in Sessions Case No.139 of 2004. With passage of time, the appellant/accused No.1 Vishnu Shantaram Patil passed away and, therefore, the appeal filed by him stood abated vide Order dated 19/4/2018.

2 Sole surviving appellant/accused Ajay Vishnu Patil has preferred this Criminal Application bearing No.113 of 2018 for permitting him to compound the offences held to be proved against him viz. Under Section 325 read with Section 34 and under Section 324 of the Indian Penal Code by contending that both the parties have decided to compromise and settle the dispute as the prosecuting party and the accused are next-door neighbourers and they are residing in village Khoni of Bhiwandi Taluka of Thane District since generations. Because of

involvement of family friends and villagers, there has been an amicable settlement between the parties and both the injured are willing to compound the offences.

3 Mr.Kanderkar, the learned Advocate appears for injured Tukaram Bagal and Liladhar Bagal, who were examined as P.W.No.1 and P.W.No.2 during the course of the trial. He undertakes to file *vakalatnama* on behalf of both of them during the course of the day.

4 The learned Additional Public Prosecutor has not disputed the fact that these are the only injured witnesses in the incident in question.

5 The learned Advocate appearing for both of them has tendered across the bar the affidavits of both these injured witnesses stating the fact that because of involvement of family friends, they have decided to amicably settle the differences between them as well as the accused, who happens to be their next-door neighbourer for maintaining peace and harmony. Those affidavits are taken on record. As per version of these witnesses, as reflected from their affidavits, they want to finish of the matter by compounding the offences.

6 The incident in question dates back to 01/08/2003. The Criminal Law (Amendment) Act, 2005 came into effect from 23/06/2006 and by virtue of this Act, the offence punishable

under Section 324 of the Indian Penal Code is made non-compoundable. Earlier to that, the offences punishable under Sections 324 and 325 of the Indian Penal Code were compoundable. The learned Advocate appearing for the appellant/accused has rightly placed reliance on the judgment of the Honourable Apex Court in the matter of ***Shankar Yadav & Anr. v. State of Chhatisgarh***¹. Paragraph Nos.7 and 8 of the said Judgment needs re-production. They read thus :

“7. Under the Code, as originally enacted in 1973, an offence punishable under Section, 324 IPC (voluntarily causing hurt by dangerous weapons or means) was made compoundable with the leave of the Court. It is true that the offence punishable under Section 324 of the IPC is non-compoundable by virtue of the Criminal Law (Amendment) Act, 2005 (Act No.25 of 2005) which came into force with effect from 23.06.2006.

8. According to the prosecution, the appellants had committed the offence on 12.01.1998. In view of the above fact, in our opinion, Act 25 of 2005 has no application to the facts of the instant case. Thus, this situation is squarely covered by the judgment of this Court in the case of Mohd. Abdul Sufan Laskar and others vs. State of Assam (2008) 9 SCC 333 (AIR 2008 SC (Supp.) 439), whereby this Court has held that the offence punishable under Section 324 of IPC which was committed earlier to the said Amendment will be compounded.”

¹ AIR 2017 SC 3531.

7 In this view of the matter and as on the date of the incident, the offences punishable under Sections 324 and 325 were compoundable with the permission of the Court, I see no reason to refuse permission to the parties to compound the offences in the light of the fact that the prosecuting party as well as the surviving accused are next-door neighbours residing in the same village since generations for maintaining peace and harmony in the village and in fact between the parties, interest of justice would serve if the offences are permitted to be compounded.

8 Injured P.W.No.1 Tukaram Bagal and P.W.No.2 Liladhar Bagal are personally present in the Court with their learned Advocate. Upon inquiry, both of them have stated that they have amicably settled the matter and they are desirous to compound the offences and that the appellant/accused be acquitted of the offences in view of the compounding.

9 The learned Additional Public Prosecutor is not in a position to point out anything in rebuttal.

10 In this view of the matter, the following order :

ORDER

- (i) Injured P.W.No.1 Tukaram Bagal and injured P.W.No.2 Liladhar Bagal are permitted to compound the offences

punishable under Sections 324 and 325 of the Indian Penal Code, which are proved against the applicant/accused No.2 Ajay Vishnu Patil.

- (ii) The application bearing No.113 of 2018 is allowed in terms of prayer clause (b).
- (iii) Consequently, the impugned Judgment and Order dated 15/01/2005 passed by the learned Adhoc-Additional Sessions Judge, Thane in Session Case No.139 of 2004 thereby convicting the appellant/accused No.2 of offences punishable under Section 325 read with Section 34 and under Section 324 of the Indian Penal Code as well as the resultant sentence imposed upon him is quashed and set aside.
- (iv) The appellant/accused No.2 Ajay Vishnu Patil is acquitted of the offences punishable under Section 325 read with Section 34 and under Section 324 of the Indian Penal Code.
- (v) The appeal stands disposed of accordingly.

(A.M.BADAR J.)