

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

CRIMINAL APPEAL NO.131 OF 2007

1. Sidram @ Bandu s/o Tukaram Ghodke
Aged : 37 yrs, Occu : Painter,
R/o. Mali Nagar, Ambajogai,
Dist. Beed
 2. Shahaji s/o Ranuji Gaikwad
Aged : 27 yrs, Occu : Agril,
R/o. Mali Nagar, Ambajogai
Dist. Beed
 3. Ashok s/o Manoharrao Deshmukh
Aged : 27 yrs, Occu : Education,
R/o. Mali Nagar, Ambajogai,
Dist. Beed
 4. Pradeep s/o Ambadas Shendge
Aged : 33 yrs, Occu : Workshop,
R/o. Mali Nagar, Ambajogai,
Dist. Beed
 5. Ankush s/o Tukaram Ghodke
Aged : 30 yrs, Occu : Agri,
R/o. Mali Nagar, Ambajogai,
Dist. Beed
 6. Rajesh s/o Narsingh Chavan,
Aged : 29 yrs, Occu : Agri,
R/o. Saraswat Colony, Ambajogai,
Dist. Beed
- ... Appellants

VERSUS

1. The State of Maharashtra
2. Sudhamati w/o Keshav Kendre
Age : 45 years, Occu : Household,
R/o Near Navgan College, Bhagveshwar Colony,
Parali Vaijanath, Ta. Parali Vaijanath,
Dist. Beed
3. Keshav s/o. Rambhaji Kendre

Age : 56 years, Occu : Agril,
R/o. Near Navgan Collge, Bhagveshwar
Colony, Parali Vaijanath, Tal. Parali
Vaijanath, Dist. Beed

... Respondents

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Advocate for Appellants : Shri S.S. Choudhary
APP for Respondent – State : Shri Y.G. Gujrathi
Advocate for Respondents No.2 & 3 : Shri V.M. Chate

...

WITH

CRIMINAL APPLICATION NO.4034 OF 2017

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CORAM : PR. BORA, J.

Dated: September 16, 2019

ORAL JUDGMENT :-

1. The present appeal is filed by accused nos.1, 3, 5, 6, 8 & 9 in Sessions Case No.53 of 2004 decided by the learned Additional Sessions Judge, Ambajogai on 28.03.2007. The appellants are convicted in the aforesaid sessions case for the offences punishable under Sections 147, 435, 323 r.w. 149 of Indian Penal Code (hereinafter referred to as the 'I.P.C.'). The maximum sentence imposed upon the appellants is of 2 years Rigorous Imprisonment for the offence punishable under Section 435 r.w. 149 of I.P.C. For the offence punishable under Section 147 of I.P.C. the punishment has been imposed of three months R.I. and for the offence punishable under Section 323 r.w. 149 of I.P.C. the punishment inflicted is three months R.I. with certain fine amount.

2. Criminal Application No.4034 of 2017 is jointly filed by the appellants and respondent nos.2 and 3 in Criminal Appeal No.131 of 2007. The report was lodged by respondent no.2 viz: Sudamati Keshav Kendre, whereupon the crime was registered against the present appellants and the investigation was set in motion. The present Criminal Application has been filed for compounding of the offences proved against the appellants. Insofar as the offence under Section 323 r.w. 149 of I.P.C. is concerned, the same is compoundable, however the other two offences i.e. the offence under Section 147 of I.P.C. and offence under Section 435 of I.P.C. are not compoundable. In view of the legal position as above, the request made in the Criminal Application for compounding all of the offences proved against the appellants cannot be accepted.

3. The parties are present before the Court. The appellants as well as the victims both have verified the contents of the application and the present application itself is verified on oath by each of the applicant of the present application. Learned Counsel Shri Choudhary appearing for the appellants-applicants submitted that, the parties have amicably settled the dispute between them. The learned counsel further submitted that, the appellants and the victims both are the residents of the same locality and now they have decided

to end the dispute between them, which had occurred way back in the year - 2001. This Court has personally enquired with Sudamati w/o. Keshav Kendre and Keshav Rambhaji Kendre whether they are willing to proceed with the matter or the dispute between them and the appellants has been really settled. Both have submitted before this Court that, now the dispute has been amicably settled and they don't desire that any punishment is to be imposed upon the appellants in the present matter and they have also prayed for compounding the offences.

4. As I noted herein above, the offences proved against the appellants under Sections 147 and 435 r.w. 149 of I.P.C. are not compoundable and as such, the request to that extent cannot be considered. However, the fact that the parties have now settled the dispute amongst themselves and having further regard to the fact that, the alleged incident had occurred way back in the year 2001 i.e. prior to about 18 years, there seems no propriety in imposing upon the appellants any substantial sentence so as to send them behind the bars. Though the compounding is not permissible the fact of entering into the compromise by the parties can be held to be a mitigating circumstance so as to reduce the punishment imposed upon the appellants. Higher punishment imposed upon the appellants is for

the offence punishable under Section 435 of I.P.C. that is of 2 years R.I. As I noted herein above, in view of the fact that the parties have now decided not to litigate against each other and the victims have now submitted before the Court that, they don't desire that the accused be now punished in the aforesaid matter, it appears to me that, the request of the applicants can be sympathetically considered and though the compounding is not permissible, the appeal can be disposed of by reducing the substantial sentence imposed upon the applicants – appellants. While doing so, the balance can be struck by increasing the amount of fine. As has been informed by the learned Counsel appearing for the appellants, the appellants are the agriculturists.

5. In the result, the following order is passed.

ORDER

Criminal Application No.4034 of 2017 :

(i) The applicants-appellants are permitted to compound the offence punishable under Section 323 r.w. Section 149 of I.P.C. and in view of the compounding, the applicants-appellants stand acquitted of the offence punishable under Section 323 r.w. Section 149 of the I.P.C. Insofar as the request made for compounding the offences punishable under Sections 147 and 435 r.w. Section 149 of I.P.C. is concerned, the application stands rejected.

(ii) Criminal Application No.4034 of 2017 is partly allowed in the aforesaid terms.

Criminal Appeal No.131 of 2007:

(i) The conviction of the appellants for the offence punishable under Section 323 r.w. Section 149 of I.P.C. in Sessions Case No.53 of 2004 decided by the Additional Sessions Judge, Ambajogai on 28.03.2007 is set aside in view of the order passed in Criminal Application No.4034 of 2017.

(ii) The conviction of the appellants for the offences punishable under Sections 147 and 435 r.w. Section 149 of I.P.C. though is maintained, the sentence is modified as under:

(a) For both the aforesaid offences, the appellants are sentenced to suffer Simple Imprisonment till rising of the Court and to pay fine of Rs.10,000/- each, in default to suffer Simple Imprisonment for One Month.

(b) The appellants shall deposit the fine amount in the Trial Court within three weeks from the date of this order, failing which the Trial Court shall take necessary steps against the appellants to ensure that the appellants undergo default sentence imposed upon them.

(c) After the fine amount is deposited, a sum of Rs.20,000/- out of it shall be paid to appellant no.2 namely Sudhamati Keshav Kendre and the remaining amount shall be credited to the State

Government.

(iii) Criminal Appeal stands allowed in the aforesaid terms.

(**PR. BORA, J.**)