

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL APPEAL No. 54 OF 2019**

Rafael Peregrino Da Costa

...Appellant*Versus*P.I., Panaji Police Station,
Panaji.**.... Respondents.**

Mr. Arun de Sa with Mr. S. Sardesai, Advocates for the Appellant.

Mr. Pravin Faldesai, Additional Public Prosecutor for the
Respondents No.1 and 2.Mr. S. D. Lotlikar, Senior Advocate with Mr. Jayant Karn, Advocate
for the Respondent No.3.**WITH****CRIMINAL APPEAL No. 38 OF 2019**

Zane Keith Almeida

...Appellant*Versus*State of Goa through Panaji Police
Station, Panaji and Anr.**.... Respondents.**Mr. S. D. Lotlikar, Senior Advocate with Mr. Jayant Karn, Advocate
for the Petitioner.Mr. G. Nagvenker, Additional Public Prosecutor for the Respondents
No.1 and 2.

WITH
CRIMINAL APPEAL No. 7 OF 2020

State of Goa through Public Prosecutor **...Appellant**

Versus

Zane Keith Almeida **.... Respondent.**

Mr. Pravin Faldessai, Additional Public Prosecutor for the Petitioners.

Mr. S. D. Lotlikar, Senior Advocate with Mr. Jayant Karn, Advocate for the Respondent.

**Coram : M. S. SONAK &
M. S. JAWALKAR, JJ.**

Date : 02nd September, 2020

P.C.:

We have heard the learned Counsel for the parties extensively.

2. For the reasons which we are separately recording, we are satisfied that the appellant in Criminal Appeal No. 38 of 2019, i.e. Zane Keith Almeida, should not have been convicted under Section 326 of the IPC but rather, he was required to be convicted under Section 335 of the IPC. Accordingly, we set aside his conviction

under Section 326 of the IPC and substitute the same with conviction under Section 335 of the IPC.

3. Consequent upon setting aside the conviction under Section 326 of the IPC, the sentence for 3 years rigorous imprisonment is also set aside and the same is substituted by a sentence of imprisonment for the period already undergone by the said Zane Almeida. The record indicates that he has already undergone a sentence of approximately 7 months or thereabouts.

4. We find that by the impugned judgment and order dated 29.06.2019 the learned Sessions Judge had directed Zane Almeida to pay compensation of ₹50,000/- to PW-8, Rafael Peregrino Da Costa, i.e. the victim, and in default to undergo further simple imprisonment for a period of 3 months. The learned Counsel for the parties, including the learned Additional Public Prosecutor agree that there can be no in-default imprisonment directed for failure to pay the amount of compensation. Accordingly, even that

portion of the impugned judgment is set aside.

5. Insofar as the issue of compensation to be paid by Zane Almeida to PW-8, Rafael Peregrino Da Costa, the victim, who has lost his eye in the incident, Mr. Lotlikar, learned Senior Advocate for Mr. Zane Almeida and Mr. De Sa, learned Counsel for the PW-8 – Rafael Peregrino Da Costa, who, has, in fact, preferred Criminal Appeal No. 54 of 2019, submitted that the parties have settled amongst themselves the issue of quantum of compensation which is to be paid by the said Zane Almeida to Rafael Peregrino Da Costa. Mr. Lotlikar, in fact states that today itself, a cheque bearing No. 111400 dated 15.10.2020 drawn on Bank of India, Miramar Branch will be handed over to Rafael Peregrino Da Costa.

6. Mr. De Sa, submits that PW-8, Rafael Peregrino Da Costa, has agreed to the aforesaid arrangement. We also ascertained from Mr. Rafael Peregrino Da Costa, who appeared before us through video-conferencing, that he is agreeable to the adoption of

the aforesaid course of action.

7. Accordingly, all these 3 appeals are disposed off in the aforesaid terms. The impugned judgment is also modified in the aforesaid terms.

M. S. JAWALKAR, J.

M. S. SONAK, J.

msr.