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CRL.A. Nos.179-.270/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS.179 & 270 OF 2021

Hameed Hamja .. Appellant in CA 179/2021

Gopinath .. Appellant in CA 270/2021

- Vs -

State, rep. by
The Inspector of Police
L & O – D1, Triplicane Police Station. .. Respondent in both appeals

Criminal Appeals filed u/s 374 (2) Cr.P.C. to call for the records and set aside the conviction and sentence imposed on the appellants by the learned VI Addl. Sessions Judge, Chennai vide judgment dated 22.03.2021 in S.C. No.336/2016 by allowing this appeal.

For Appellants : Mr. P.Rajkumar Pandian in CA
179/2021
Mr. R.Vivekanandan in CA
270/2021

For Respondent : Ms. G.V.Kasthuri, APP



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COMMON JUDGMENT

The present appeals have been directed by the respective accused against the conviction and sentence recorded against them by the learned VI Addl. Sessions Judge, City Civil Court, Chennai, in S.C. No.336/2016 vide judgment dated 22.03.2021.

2. The appellants were charged and tried for the offence u/s 307 r/w 34 IPC and after trial, on being found guilty, they were sentenced to rigorous imprisonment for a period of 10 years together with fine of Rs.1,00,000/- (Rupees One Lakh only) each and in default to undergo simple imprisonment for a further period of one year. The fine amount, paid by the respective appellant was directed to be paid to P.W.1. The period of incarceration already undergone by the appellants were directed to be set off u/s 428 Cr.P.C. Aggrieved by the said conviction and sentence, the present appeals have been filed by the respective appellant.



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3. For the sake of convenience, the appellants will be referred to in the same order as they were arrayed before the trial court.

4. The brief facts leading to the filing of the present appeals are as under:-

P.W.1 and the appellants were friends and that they were engaged in the business of buying foreign items and selling the same in the market for higher gains. Since P.W.1 was earning more, aggrieved therewith, the appellants, with a view to do away with him, asked P.W.1 to come to their place at the hotel at about 4.00 a.m. in the early morning hours of 27.6.2014 and pursuant to the same, P.W.1 went to the lodge situated at the back side of Devi Theatre in Triplicane and reached their room No.206. In the room, A-1, asking P.W.1 to walk out from the said business, attacked him on the head with a hammer, M.O.1 and A-2, pushing P.W.1 down, attacked him on the neck with his leg and also hit him on the head with another hammer, M.O.2. P.W.1, out of pain, shouted and the persons, who were in the adjacent rooms in the lodge came running. P.W.1 felt dizzy and fell unconscious and he was taken to the hospital.



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5. Soundarrajan, who was the Manager of the mansion in which the appellants were staying, who was arrayed as a witness, but pending the trial, passed away, appeared before P.W.9, the Inspector of Police, D-1 Triplicane Police Station and preferred the complaint, Ex.P-7 based on which Ex.P-8, the FIR came to be registered.

6. P.W.9, taking up investigation in the said case, went to the scene of occurrence at about 7.15 p.m. on 27.6.2014 and observed the place and prepared observation mahazar, Ex.P-9 and drew the rough sketch, Ex.P-10 in the presence of witnesses. Upon coming to know that the injured, P.W.1 was admitted at the Government Rajiv Gandhi Hospital, P.W.9 went to Rajiv Gandhi Government Hospital and examined him and informed his relatives. Continuing with his investigation, on 28.6.2014, P.W.9 arrested the appellants in the presence of witnesses and based on the voluntary confession statement given by them, P.W.9 recovered the two hammers, M.O.s 1 and 2 under the cover of mahazar, Ex.P-13, on the basis of the admissible portion of the



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statement of A-1, , Ex.P-11 and A-2, Ex.P-12. The seized objects were sent to court under Form-95, Ex.P-14.

7. Continuing with his investigation P.W.9 examined further witnesses and recorded their statements. P.W.9 also examined the doctor, P.W.6, who had treated the injured, P.W.1 and recorded their statements. P.W.9 also obtained the copy of the accident register, Ex.P-4 and discharge summary, Ex.P-5. After examining further witnesses and recording their statements, P.W.9 filed the final report against the appellants for the offence u/s 307 r/w 34 IPC.

8. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 9 and marked Exs.P-1 to P-14 and marked M.O.s 1 to 3.

9. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the



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prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

10. The trial court, on consideration of oral and documentary evidence and other materials, convicted and sentenced both A-1 and A-2 as aforesaid aggrieved by the which, the present appeals have been filed by the appellants.

11. Though very many grounds have been raised assailing the said conviction and the consequent sentence imposed, however, at the time of hearing, learned counsel appearing for the respective appellant submitted that the appellants may be permitted to compound the offence so as to give a quietus to the issue as they are not inclined to drag the appeals any further, to which P.W.1, the victim did not have any objection. When this Court queried the learned counsel as to the power of this Court to compound the offence, reliance was placed on the decision of the apex Court in ***Jage Ram & Ors. – Vs – State of Haryana (2015 (11) SCC 366)***.



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12. In *Jage Ram case*, the Supreme Court was considering a similar issue with regard to Section 307 IPC and reduction of sentence thereof was argued, in which the Apex Court observed as under :-

“15. Learned Counsel for the Appellants contended that the second Appellant is in custody for more than three years and since the occurrence was in the year 1994, prayed for reduction of the sentence imposed on the second Appellant to the period already undergone. Placing reliance upon the judgment of this Court in Hari Singh v. Sukhbir Singh & Ors. MANU/SC/0183/1988 : (1988) 4 SCC 551., learned Counsel for the Appellants additionally submitted that in terms of Section 357(3) Code of Criminal Procedure that the compensation may be awarded to the victim and the sentence be modified to the period already undergone.

16. For the conviction under Section 307 Indian Penal Code, courts below imposed upon the 2nd Appellant rigorous imprisonment of five years, while imposing punishment, courts have an obligation to award appropriate punishment. Question of awarding sentence is a matter of discretion and the same has to be exercised by the courts taking into consideration all the relevant circumstances. What sentence would meet the ends of justice would depend upon the facts and circumstances of each case and the courts must keep in mind the gravity of the offence, motive for the crime, nature of the offence and all other attendant circumstances. Vide State



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of M.P. v. Bablu Natt MANU/SC/8478/2008 : (2009) 2 SCC 272; Alister Anthony Pareira v. State of Maharashtra MANU/SC/0015/2012 : (2012) 2 SCC 648 and Soman v. State of Kerala MANU/SC/1110/2012 : (2013) 11 SCC 382."

13. In the present case on hand, the occurrence is of the year 2016 and due to business enmity between the victim and the appellants, in the heat of passion, the appellants have attacked the victim and caused injuries. The appellants have been in custody and have already suffered more than 15 months of imprisonment. However, considering the gravity of the offence, this Court expressed its disinclination to compound the offence considering the fact that the victim had suffered physical and mental trauma and that he had lost one of his vision due to the perverted acts of the appellants.

14. However, it is placed before this Court that the appellants and the victim, viz., P.W.1, having arrived at a compromise to settle the matter amicably on each of the appellant paying a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the victim P.W.1, and, therefore, it is submitted on behalf of the appellants that this Court may reduce the sentence considering the familial plight of the appellants, who had done the act in the heat of anger.



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15. Though, as aforesaid, this Court was not inclined to compound the offence, however, in view of the compromise having been arrived at between the appellants and P.W.1, the victim, and further the appellants have shown remorse to what they have committed and are desirous to set right the wrong committed by them and also considering the fact that the victim P.W.1 had also acceded to compound the offence and reduce their sentence, this Court, having regard to the aforesaid facts and circumstances of the case, without going into the merits of the issues, is of the considered view that the sentence imposed on the appellants could be reduced to the period already undergone on the appellants compensating the victim, as per the compromise entered into between the appellants and the victim, viz., P.W.1.

16. Accordingly, as undertaken, on 25.07.2024 when the case was taken up, it was informed that A-1 had tendered a sum of Rs.6,00,000/- (Rupees Six Lakhs only) by way of Demand Draft and A-2 had tendered a sum of Rs.4,00,000/- (Rupees Four Lakhs only) by way of Demand Draft to the



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victim and sought for some more time to pay the balance amount. Therefore, the case was directed to be listed on 31.07.2024.

17. When the matter was taken up on 31.07.2024, learned counsel for the appellants submitted that the balance amount of Rs.10,00,000/- (Rupees Ten Lakhs only) to be jointly paid by A-1 and A-2 have been paid to the victim, P.W.1, which is confirmed by the learned Addl. Public Prosecutor.

18. In view of the aforesaid position, these criminal appeals are dismissed by confirming the conviction imposed on the appellants by the trial court in S.C. No.336/2016 vide judgment dated 22.03.2021 is confirmed, but in view of the fact that each of the appellant has paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), in all a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the victim, P.W.1, applying the ratio laid down by the Apex Court in *Jage Ram case*, the sentence imposed on the appellants is reduced to the period already undergone. It is stated that the appellants are on bail. Bail bonds executed by the appellants shall stand cancelled.



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Index : Yes / No

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Chennai.
3. The Public Prosecutor
High Court, Madras.



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