

Sheikh Anis vs The State Of Madhya Pradesh on 7 January, 2020

Bench: N.V. Ramana, V. Ramasubramanian

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.25 OF 2020
(arising out of Special Leave Petition (Crl.) No.3517

SHEIKH ANIS

... APP

Versus

STATE OF MADHYA PRADESH & ANR.

... RES

WITH

CRIMINAL APPEAL No.26 OF 2020
(arising out of Special Leave Petition (Crl.) No.124
arising out of D.No.39987 of 2019)

O R D E R

1. Delay condoned in Special Leave Petition (Crl.) D.No.39987 of 2019.

2. Leave granted.

3. Aggrieved by their conviction for the offences punishable under Sections 307 and 450 of the Indian Penal Code (for short 'IPC') and the sentence of rigorous imprisonment for 10 years for the offence punishable under Section 307 IPC and rigorous imprisonment for 5 years for the offence under Section 450 IPC, apart from a fine of Rs.5000/□and Rs.500/□respectively, awarded by the Sessions Court and confirmed on appeal by the High Court, accused 1 and 2 have come up with the above appeals. Though there were four accused charged by the prosecution and all of them Reason:

were convicted and awarded the same punishment by the Sessions Court, accused 3 and 4 have been acquitted by the High Court. Hence, A□ and A□2 have come up with these appeals.

4. In the first of these two appeals, filed by A□, the appellant also took out an application as Interlocutory Application No.66243 of 2018 seeking to implead the victim, against whom the

offences were allegedly committed. The impleadment was sought on the ground that A□ (appellant in the first criminal appeal) and the victim□Israel are closely related to each other and that they had settled the disputes between them amicably and that therefore A□ even filed an application for compounding of the offences, before the High Court and that due to oversight, the High Court omitted to take note of the application in IA No.25762 of 2013 filed under Section 320 read with Section 482 of the Code of Criminal Procedure.

5. On 13.04.2018, this Court ordered notice not only in special leave petition filed by A□ but also ordered notice in the application for impleadment.

6. Subsequently, A□ came up with a separate special leave petition out of which the second criminal appeal arises. Therefore, it was directed, on 29.11.2019 to be tagged alongwith special leave petition filed by A□.

7. We have heard Mr.Aman Nandrajog and Mr.Sumeer Sodhi, learned counsel for the appellants in both the appeals, Mr. Rahul Kaushik, learned standing counsel for the State of Madhya Pradesh and Ms. Jaikriti S. Jadeja, learned counsel for the victim who is sought to be impleaded in the first criminal appeal.

8. At the outset it is to be pointed out that the offences punishable under Sections 307 and 450 IPC are not compoundable under either of the two sub□sections under Section 320 Cr.P.C. Therefore the question of impleading the victim, for the purpose of recording any settlement does not arise. Hence, the application for impleadment is dismissed.

9. Coming to the merits of the case, it is seen that a First Information Report in Crime No.32 of 1996 was lodged on 27.01.1996 by one Deepak (PW□) against four named individuals including the appellants herein, for the commission of offences under Sections 326 and 452 read with Section 34 IPC. After investigation, a charge□sheet was filed on 28.03.1996 against all the four accused, charging them with the commission of the offences punishable under Sections 307 and 450 IPC.

10. By a judgment dated 3.01.1997, the Sessions Court held all the four accused guilty of the offences punishable under Sections 307 and 450 IPC and awarded rigorous imprisonment for 10 years and 5 years respectively for each of the two offences, apart from fine amounts. Aggrieved by the conviction and sentence, all the four accused jointly filed an appeal in Criminal Appeal No.157 of 1997 on the file of the High Court of Madhya Pradesh. By a Judgment dated 9.11.2017, the High Court dismissed the appeal insofar as A□ and A□ are concerned, but allowed the appeal in respect of A□ and A□ and acquitted them.

11. Admittedly, the victim examined as PW□ was running a dhaba alongside the road at Rampur Village and A□ was also running a dhaba. A□ who is related to the victim, used to look after the dhaba of the victim, but stopped doing so after he started an independent one. The dispute between A□ and the victim had its genesis in this business rivalry.

12. According to PW□2 and PW□3, the victim was attacked with knife and khukhri. The doctor, who examined the victim, gave his opinion, marked as Ex. P□5 and he was also examined as PW□5. He noted the following injuries on the person of PW□3:

- (i) Incised wound over skull middle region sized about 10cm x 2cm x bonedeeep.
- (ii) Incised wound over right parietal region of skull sized about 8cm x 1 cm x bone deep.
- (iii) Incised wound over frontal region of skull sized 8 cm x 1 cm x bonedeeep.
- (iv) Incised wound over upper lip sized about 2 cm x A1/2 cm x A1/2 cm.
- (v) Multiple incised wound over right forearm extending from elbow to hand bonedeeep.
- (vi) Multiple incised wound over left forearm extending upper third to left hand bone deep.
- (vii) Bruise over right leg upper portion sized 3 cm x 4 cm.

13. Dr. A.K. Jain examined as PW□7 and whose report was marked as Ex. P□6 found fracture in the ulna bone in both the hands of the victim.

14. Though PW□6 and PW□7 who witnessed the seizure□memo relating to the weapons used for the commission of the offences turned hostile, they admitted their signatures in the seizure□memo.

15. On the basis of the medical reports and the evidence of PW□5, both the Sessions Court and the High Court came to the conclusion that the injuries caused to the victim were grievous in nature and that the victim was semi□conscious when he was brought. Therefore, the conclusion reached by the Sessions Court and confirmed by the High Court that the victim could have died, due to the injuries, if proper and timely treatment had not been given to him, is unassailable.

16. Once the identity of A□1 and A□2 had been established clearly and once the assault on PW□3 resulting in grievous injuries that could have resulted in the death of PW□3 is also established, it is not possible to find fault with the conviction handed over by the Sessions Court and the High Court for the offences punishable under Sections 307 and 450 IPC.

17. Coming to the sentences awarded, even the Sessions Court recorded the plea of the accused that they had no criminal antecedents and that the assault was the result of a business rivalry. However, the Sessions Court awarded 10 years rigorous imprisonment with a fine of Rs.5000/□for the offence under Section 307 IPC and 5 years rigorous imprisonment with a fine of Rs.500/□for the offence under Section 450 IPC, only on account of the fact that the assault on PW□3 was with sharp weapons such as knives and khukhris. Unfortunately, the High Court did not even go into the

question of sentence. After coming to the conclusion that A□ and A□ were guilty of commission of the offences alleged, the High Court simply confirmed both the conviction and the sentence. This was perhaps due to the fact that the appellants were not represented by their counsel when the appeal was taken up for hearing. The High Court proceeded to dispose of the appeal on merits in the absence of the counsel for the appellants, in view of the fact that the appeal was of the year 1997 and it was coming up for hearing after twenty years in the year 2017. Therefore, the learned counsel appearing for the appellants pleaded that the question of sentence required to be considered in the light of the established parameters.

18. It is not in dispute that the assault on PW□ was on account of a business rivalry and that A□ is related to the victim. It is also not disputed that out of the maximum period of imprisonment for 10 years, both the appellants have already spent more than 5 ½ years of incarceration. The appellants are not stated to have any criminal antecedents. The appellants also attempted to have the offence compounded but could not succeed in view of the fact that these offences are not compoundable.

19. In light of the above, we are of the view that even while confirming the conviction of the appellants for the offences punishable under Sections 307 and 450 IPC, the sentence imposed upon them could be reduced to the period of incarceration already undergone. Hence, the appeals are allowed and the impugned judgment of the High Court is modified. The punishment imposed upon the appellants shall stand reduced from the one imposed by the Sessions Court and confirmed by the High Court, to the period of imprisonment already undergone. But the fines imposed on the appellants are confirmed. The appellants shall be released forthwith, unless they are also detained in custody in connection with any other crime.

.....J (N.V. Ramana)J (Aniruddha Bose)
.....J (V. Ramasubramanian) New Delhi January 07, 2020.

ITEM NO.31

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.)

No.3517/2018

(Arising out of impugned final judgment and order dated 09□1□2017 in CRLA No. 157/1997 passed by the High Court of M.P. Principal Seat at Jabalpur) SHEIKH ANIS Petitioner(s) VERSUS THE STATE OF MADHYA PRADESH & ANR. Respondent(s) (IA No. 66243/2018 □ INTERVENTION/IMPLEADMENT) WITH Diary No(s). 39987/2019 (II□A) (IA No.175547/2019□ CONDONATION OF DELAY IN FILING SLP, IA No.175551/2019□EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.175550/2019□EXEMPTION FROM FILING O.T.) Date : 07□01□2020 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA HON'BLE MR. JUSTICE ANIRUDDHA
BOSE HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN For Petitioner(s) Mr.

Sumeer Sodhi, AOR Mr. Aman Nandrajog, Adv.

Mr. Ashish Tiwari, Adv.

Ms. Rakhi Ray, AOR For Victim Ms. Jaikriti S. Jadeja, Adv.

For State of M.P. Mr. Rahul Kaushik, Adv.

Ms. Bhuvneshwari Pathak, Adv.

Ms. Shilpi Satyapriya Satyam, Adv. Mr. Rahul Khatri, Adv.

UPON hearing the counsel the Court made the following O R D E R Delay condoned in Special Leave Petition (Crl.) D.No.39987 of 2019.

Application for impleadment is dismissed. Leave granted.

The appeals are allowed in terms of the signed order. Pending applications filed in the matters are also stand disposed of.

The appellants shall be released forthwith, unless they are also detained in custody in connection with any other crime.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)