Pravat Chandra Mohanty vs The State Of Odisha on 11 February, 2021

Equivalent citations: AIR 2021 SUPREME COURT 1067, AIRONLINE 2021 SC 58

Author: Ashok Bhushan

Bench: Ajay Rastogi, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 125 OF 2021
(arising out of SLP (Crl.)No.6174/2020)

PRAVAT CHANDRA MOHANTY ...APPELLANT(S)

VERSUS

THE STATE OF ODISHA & ANR. ...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 126 OF 2021
(arising out of SLP (Crl.)No.6224/2020)

PRATAP KUMAR CHOUDHURY ...APPELLANT(S)
(IN JUDICIAL CUSTODY)

VERSUS

THE STATE OF ODISHA ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

Leave granted.

2. These two appeals by the accused have been filed against the common judgment of the Orissa High Court Date: 2021.02.11 14:47:12 IST Reason:

dated 09.11.2020 dismissing the Criminal Appeal Nos.

207 and 210 of 1988 filed by the appellants. Both the appellants being the accused in Lal Bagh P.S.Case No.273 of 1985 were tried in Sessions Trial No.246 of 1985 for the offences punishable under Sections 304, 342, 323, 294, 201 167, 477-A, 471 read with Section 34 of the IPC. Learned Sessions Judge convicted the accused Pratap Kumar Choudhury under Section 304 (Part II) IPC to undergo R.I. for eight years and accused Pravat Chandra Mohanty under Section 304 (Part II) to undergo R.I. for five years. Both the accused were further sentenced under Section 471 IPC read with Section 466 IPC to undergo R.I. for three years and R.I. for three months under Section 342 IPC and R.I. for one month under Section 323 IPC by judgment dated 29.08.1988.

3. Aggrieved by the judgment of the trial court the appellants, Pravat Chandra Mohanty (hereinafter referred to as "Mohanty") filed Criminal Appeal No.207 of 1988 and Pratap Kumar Choudhury (hereinafter referred to as "Choudhury") filed Criminal Appeal No.210 of 1988 before the Orissa High Court. The High Court decided both the appeals by its judgment and order dated 09.11.2020 partly allowing the appeals. The conviction of both the appellants under Section 304 (Part II) IPC read with Section 34 IPC and Section 342/34 IPC was set aside and their conviction under Sections 323/34 IPC and 471/34 IPC was upheld. The High Court convicted both the appellants under Section 324/34 IPC. Simple imprisonment for one month was imposed under Section 323/34 IPC. Simple imprisonment for three months for the offence under Section 471/34 IPC and simple imprisonment for one year for the offence under Section 324/34 IPC were imposed by the High Court. All the sentences were to run concurrently. Aggrieved by the above judgment these appeals have been filed.

4. When these appeals were taken by this Court on 17.12.2020, learned counsel for the appellants confined his submissions to the conviction under Section 324 IPC only. Learned counsel for the appellants further volunteered that the appellants are willing to compensate the family of the deceased. Following order was passed on 17.12.2020 by this Court:

"Learned senior counsel for the petitioners confines his submissions to the conviction under Section 224 of the IPC on the ground that what was used was a baton. He volunteers that the petitioners are willing to compensate the family of the deceased and that they are now in their middle 70s. On a Court query learned counsel offers and agrees to deposit Rs.3.5 lakhs each for the two petitioners each totaling to Rs.7 lakhs as compensation in this Court within three weeks so that the total compensation admissible to the family would be 10 lakhs taking into consideration Rs. 3 lakhs awarded to the legal representatives of the deceased which the State Government would have paid.

Issue notice on the SLP as well as on the interim bail returnable in the first miscellaneous week post the winter recess. We consider appropriate to implead the legal representatives of the deceased as respondents.

Amended memo of parties be filed.

Notice be also issued to the said respondents.

Dasti in addition through the standing counsel for the State and to the legal heirs of the deceased in person."

5. Legal heirs/representatives of the deceased were impleaded in these appeals and they entered appearance before this Court. On 08.01.2021 following order was passed:

> "Applications for exemption from filing c/c of the impugned judgment and official translation are allowed.
>
> Learned counsel for the legal heirs of the deceased have entered appearance through counsel and are agreeable to the proposal made by learned counsel for the petitioner on 17.12.2020 which was recorded by us.

Learned counsel for the State submits that he has just entered appearance and may be given a short accommodation to obtain instructions and make necessary submissions.

List on 13.01.2021.

Both the learned senior counsel for the petitioner and learned counsel for the State will submit a one page synopsis in advance on the course of action suggested by them."

6. Thereafter, the appeals were heard by this Court on 04.02.2021. We have heard Shri R. Basant, learned senior counsel and Shri Yasobant Das, learned senior counsel for the appellants. Shri Ravi Prakash Mehrotra has appeared for the State of Odisha and Ms. Priyanka Vora has appeared for the legal representatives of the deceased.

7. Shri Basant, learned senior counsel, submits that in pursuance of this Court's order dated 17.12.2020, the appellants have already deposited the amount of Rs.3.5 lakhs each in the Registry of the Court. He submits that learned counsel appearing for the legal representatives are also agreeable with the proposal made by the learned counsel for the appellants, hence, conviction under Section 324 IPC be compounded by this Court under Section 320(2) Cr.P.C.

8. Learned counsel submits that on the date when the offences took place, i.e. 04.5.1985, offences under Section 324 IPC were compoundable which subsequently have been made non-compoundable. He submits that both the appellants are now more than 75 years of age and acting under the order of this Court dated 17.12.2020, the appellants having deposited amount for compensation to be paid to the legal heirs, the offences be compounded.

9. In addition to the above submission, learned counsel for the appellants has also contended that conviction under Section 324 IPC by the High Court is unsustainable. He submits that the conviction under Section 324 IPC deserves to be converted to the conviction under Section 323 IPC.

He submits that the ingredients of Section 324 IPC are not made out from the evidence brought on record. He submits that injuries which were found on the body of the deceased were all simple injuries. He submits that weapon of offence being only a wooden batten/lathi which weapon was not likely to cause death, hence, conviction under Section 324 was unjustified. He further contends that either the offence be converted under Section 323 IPC or imprisonment be substituted by fine.

10. Shri Basant further submits that alleged weapons of offence, i.e., MO.IV and MO.VII were not shown to PW.1 during trial for identification. Learned counsel further submits that there were material contradictions in the statement of PW.1-Kusia Naik, so his evidence deserved to be rejected. He submits that the High Court itself has found the statement of PW.1 only partially reliable. Shri Basant, however, fairly submitted that conviction under Section 471 IPC is not sought to be compounded which is non-compoundable. Learned counsel has not challenged the conviction under Section 471/34 IPC and is confined his submission only with regard to the conviction under Section 324 IPC.

11. Learned counsel for the State of Odisha, Shri Mehrotra, referring to affidavit filed on behalf of the State submits that with regard to the amount of compensation directed by the High Court to be given by the State Government, the State Government has completed necessary procedural formalities and would deposit or give the compensation amount as directed by the High Court to the legal representatives in the mode and manner as this Court would please direct.

12. Learned counsel appearing for the legal representatives of the deceased, Kasinath Naik, expressed their agreement to proposal of the learned counsel for the appellants as noticed in the order dated 17.12.2020.

13. We have considered the submissions of the learned counsel for the parties and perused the record.

14. The High Court in its judgment has noticed the prosecution case in paragraph 2 of the judgment. Paragraph 2 of the High Court judgment is as follows:

> "2. The prosecution case, as per the first information report (Ext.1) lodged by Kusia Nayak (P.W.1) on 05.05.1985 (Sunday) at 11 a.m. before the D.S.P., City, Cuttack(S) is that the informant was staying in a rented house of one Bishnu Mohanty of Rajabagicha, Cuttack. On 02.05.1985 he had been to Nayagarh in connection with the marriage of his nephew and returned home to Cuttack in the morning hours of 04.05.1985. After arrival, he was informed by his wife Kanchan Dei (P.W.18) that there was quarrel between their Basti residents Sura and Bainshi on Friday. He went to the market and returned at about 4 p.m. when his wife told him that Pramod Naik, Benu Naik and Guna Naik were abusing her in filthy language and telling her to drive out her family members as they had no houses and no holding numbers. The informant was also told by his wife that 4 Thana Babu of Purighat police station had called him to go to the police station. After sometime, Kasinath Naik (hereafter 'the deceased') also told the informant that the constable had come and told him in that

> respect. Accordingly, both the informant and the deceased decided to go to Purighat police station. In the evening hours, when both of them reached at Purighat police station, one police officer having mustache told the deceased that on the next time, he would cause fracture of the hands and legs of the son of the deceased by assaulting him as the later had filed a case against him before the Legal Aid. The deceased remained silent.

The said police officer also used slang language against the deceased and told that he belonged to Alisha Bazar, Cuttack and he would not allow the family of the deceased to stay at Cuttack and no lawyer could do anything to him. The deceased replied to the said police officer that on being assaulted, his wife and son had filed the case before the Legal Aid and he did not know anything in that respect.

It is further stated in the first information report that the said police officer having mustache gave a kick to the deceased and again used slang language and also gave two blows on the hands of the informant and also kicked him. Then said police officer having mustache further assaulted the 5 deceased who cried aloud and in that process, he sustained bleeding injuries on his body. The informant was asked to wait in one room of the police station and the deceased was taken to the other side verandah of the police station and was assaulted. Though the informant was not able to see the assault but he could hear the cries of the deceased. Then the police officer called the informant outside and after he came out, he saw the appellant Pravat Mohanty assaulting the deceased by means of a stick and the deceased was crying aloud. The informant gave water to the deceased on being told by the police officer but the deceased was having no strength to walk and he was just crawling. The deceased came near the informant and he was having bleeding injuries on his hands and necks and the legs were swollen. The deceased was telling that he would not survive and would die. When the deceased sought permission to attend the call of nature, the police officer having mustache and appellant Pravat Mohanty further assaulted him. When the deceased again requested to attend the call of nature, with permission of the police officer, the informant took him for such purpose and after they returned, the appellant Pravat Mohanty asked the deceased as to why he was limping. The deceased was given bread to eat but when he refused, appellant Pravat Mohanty compelled him to take bread and further assaulted him 6 on his knee. Getting indication from the constable, the informant concealed the bread and told the police officer that the deceased had already taken the bread. The said police officer brought liquor in a bottle and poured it in the mouth of the deceased as well as the informant and then sprinkled liquor over them and went outside of the police station. Sura Naik (P.W.13) who belonged to the Basti of the informant came to the police station and talked with one Mishra Babu secretly but on seeing the deceased and the informant, he went away. Then appellant Pravat Mohanty again assaulted the deceased and asked him to sit in a vehicle to go to the hospital. At that time, it was 11 to 12 O' clock in the night. The appellant Pravat Mohanty, a driver and a constable lifted the deceased and placed him inside the vehicle and he was crying that he would not survive. When the informant expressed his eagerness to accompany the deceased to the hospital, he was told that there was no necessity to accompany the deceased even though the deceased was calling the informant to accompany him. After the deceased was taken away from the police station, one constable chained the left leg of the informant to a table of the police station and in the morning hours, the informant was untied as per the instruction of the

appellant Pravat Mohanty. One sweeper was called to the police station and he was asked to clean the blood and stool of 7 the deceased which was lying at different places inside the police station. At that time the informant came to know that the deceased had died in the hospital last night. The widow of the deceased had also come to the police station crying but she was not allowed to stay there by the Havildar. It is mentioned in the first information report that the police officer having mustache was a fair and tall person.

On receipt of such first information report, Purighat/ Lalbag P.S. Case No.273 of 1985 was registered under sections 302, 342, 323, 294, 201 read with section 34 of the Indian Penal Code on 05.05.1985 at 11 a.m. against appellant Pravat Mohanty and the other police officer of Purighat police station having mustache."

15. The prosecution in the trial has examined 39 witnesses, i.e., PW.1 to PW.39. PW.1, Kusia Naik, being informant, eye-witness and injured witness and PW.39 Gaganbehari Mohanty, being the IO. No witness was examined for the defence. A large number of Exhibits running Ext.1 to Ext.67/1 were produced by the prosecution. Ext.A to Ext.J were also admitted into the evidence by defence. MO.I to MO.VII were material objects. After marshalling evidence on record, the learned trial judge while holding conviction under Section 304 (Part-II) read with Section 34 IPC recorded its conclusion in paragraph 74 which is to the following effect:

> "74. It is thus found that there is nexus between death of the deceased and the act of the accused persons in subjecting him to long detention throughout the night and in mercilessly beating him. Therefore, it is clear that such death was caused by the act of the accused persons. They did it in furtherance of their common intention. The facts of the case disclose that there might not be an intention to cause such bodily injury as was likely to cause death. But the facts disclose that the accused persons knew that their act would be likely to cause death. Hence, it is found that the accused persons also committed an offence punishable u/s 304(Part-II) I.P.C. read with section 34 IPC."

16. The defence which was taken on behalf of the accused before the Courts below was that deceased, Kasinath Naik came to Purighat Police Station at about 9 p.m. on 04.05.1985 to lodge an FIR regarding occurrence of assault on the deceased which took place on the Kathajori River embankment at about 9 p.m. by some unknown person in which the deceased sustained injuries. The case No.272/1985 was registered by appellant, Mohanty who directed the appellant Choudhury to investigate the case and maintain case diary. In order to substantiate its plea the evidence regarding FIR in Case No.272/1985 the case diary maintained in the said case by the appellant Choudhury was marked as Ext.63.

17. The High Court after marshalling the evidence on record has held that the FIR lodged to have been signed by the deceased, Kasinath Naik on which Lalbag P.S. Case No.272 of 1985 was registered did not contain the signature of Kasinath Naik. In Case No.272/1985 final report was submitted indicating the case to be false. No one challenged the final report submitted in Case No.272/1985. It is relevant to notice the relevant discussion by the High Court which is to the

following effect:

> "In view of the foregoing discussions, the defence plea that any occurrence of assault on the deceased took place on the Kathajori river embankment on 04.05.1985 at about 9.00 p.m. in which the deceased sustained injuries and came to lodge the first information report to Purighat police station and accordingly, the F.I.R. was registered and that as per the direction of appellant Pravat Mohanty, appellant P.K. Choudhury took up investigation of the case and maintained case diary vide Ext.63 mentioning all correct state of affairs is not acceptable. I am of the considered view that the deceased had not presented any F.I.R. on 04.05.1985 at 10 p.m. at Purighat police station and a false F.I.R. is shown to have been presented by him which carries the forged signature of the deceased vide Ext.A."

18. Both the appellants have been convicted under Section 371/34 IPC by the courts below, finding offence of forging and fabrication of record to be proved. The reason for fabricating the false story that deceased, Kasinath Naik came to Police Station to lodge an FIR about the assault on him at 9 p.m. was only with a view to save the accused, with intent to explain injuries caused on the body of deceased which he received during his stay in the Police Station. As noted above, the conviction of the appellants under Section 371/34 IPC has not been challenged before us. The defence taken by the appellants has miserably failed. The High Court after re-appraising the evidence on record including the oral and documentary evidence has come to the conclusion that ante-mortem injuries noticed on the person of the deceased as per postmortem report were caused in Purighat Police Station during his stay from 7.30 p.m. till post midnight on 4/5.05.1985 and the evidence of the scientific officer and chemical report also corroborates the assault at the police station and the appellants were author of those injuries. The trial court has also held in its judgment after marshalling the entire evidence that injuries were caused to the deceased, Kasinath Naik in the Police Station, Purighat by both the accused. The High Court on reappraisal of the evidence came to the same finding.

19. We have carefully perused the judgment of the trial court as well as the High Court and have adverted to the marshalling of oral evidence by both the Courts below as well as analysis of the documentary evidence on record where evidence of PW.1, who was the informant and eye-witness has rightly been believed by the trial court and the High court to the fact that both deceased and informant arrived at Police Station after 7.30 p.m. and they were mercilessly beaten by Choudhury and Mohanty. In spite of Varandah of the Police Station washed in the morning by the sweeper, the scientific officer, who visited the police station found the blood stains in the Varandah.

20. The evidence of PW.1 could not have been discarded merely because he was an agnate of the deceased. In the long cross-examination, PW.1 could not be shaken and his evidence of account given of beating of the deceased by the Police Officers, i.e., Choudhury and Mohanty is to be believed and relied on.

21. Now, we may notice the submissions of the learned counsel for the appellants challenging their conviction under Section 324 IPC. Section 324 IPC reads:

> "Section 324. Voluntarily causing hurt by dangerous weapons or means.—Whoever, except in the case provided for by section 334, volun- tarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either de- scription for a term which may extend to three years, or with fine, or with both."

22. Emphasis of learned counsel for the appellants is that only lathi and wooden batten were alleged to have been used as weapons of offence, use of which weapons cannot be said to be likely to cause death. MO.IV was a bamboo lathi and Mo.VII was a wooden batten. Section 324 IPC uses the examination of "weapon of offence". The submission cannot be accepted that use of wooden lathi and batten are weapons which are not likely to cause death. Wooden lathi and batten are the weapons which are usely possessed by the police and the submission cannot be accepted that the injuries cannot be caused by wooden lathi and batten which may cause death. It depends on the manner of use of the wooden lathi and batten.

23. Learned counsel further submits that MO.IV and MO.VII were not shown to PW.1 during trial for identification. MO.IV and MO.VII were seized and exhibited as material objects. The failure of prosecution to show the MO.IV and MO.VII to PW.1 in no manner can be said to be fatal to the prosecution case. Wooden lathi and batten are the weapons of the police force and the injuries having caused to the deceased by these weapons as has been found by the trial court and High Court, non-showing to PW.1 cannot impeach the credibility of evidence of PW.1.

24. Now, we look into the injuries which were found on the body of deceased. Post Mortem report is Exhibit-43. PW.-37 Dr. Debendra Kumar Pattnaik, had conducted the post mortem, who also appeared in the Court. The external injuries found on the body of the deceased are as follows:-

> "1. Pattern bruise and abrasion in an area of 5" x 3" on the lateral side of right thigh at its lower 1/3rd.
>
> 2. Pressure abrasion 2" x ½" in front of right leg 4" below the right knee.
>
> 3. Pressure abrasion 1.1/2" x 1/2" in the medial aspect of right leg 2.1/2" above the medial malieolus.
>
> 4. Multi-pressure abrasion in an area of 10" x 4" in front of left leg 3.1/2" below the knee.
>
> 5. Lacerated wound 1/5" x 1/4% x skin deep 4.1/2" below the left knee in front without involving the bone.

6. Grazed abrasion ½" x ½" on the left buttock 2" away from the anus.

7. Pressure abrasion in an area of 2" x 1" on left elbow joint on its posterior as pect.

8. Pattern bruise in an area of 7" x 5" on the lateral aspect of the left thigh.

9. Pattern bruise in an area of 20" x 3" on the right hand from 3" above the elbow to the dorsom of palm.

10. Pattern bruise 12 cm x 1" size in the left side of back over the scapuliar region.

11. Pattern bruise 12 cm x 1" on left side of back over the left scapula region."

25. The trial court has also convicted on the inquest report prepared by accused P.K. Chaudhary, i.e., Exhibit-16. The trial court has after considering the evidence recorded the findings that with mala fide intentions to suppress the injuries, description of injuries have been minimized in Exhibit-16 by accused P.K. Chaudhary. We are not persuaded to accept submissions of learned counsel for the appellants that conviction by the High Court under Section 324 IPC is initiated. We, thus, affirm the conviction of accused under Section 324 IPC.

26. Now, we come to the submission, which has been much pressed by learned counsel for the appellant, i.e., composition of offence under Section 324 IPC. Section 320 of the Code of Criminal Procedure, 1973, provides for compounding of offence. Sub-Section (1) of Section 320 contains a table which may be compounded by persons mentioned in third column of the table whereas sub-section (2) of Section 320 provides: -

> "320(2). The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table."

27. Sub-Section (5) of Section 320 provides as follows: -

> "320(5). When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard."

28. The present is a case where accused has already been convicted for offence under Section 324 IPC. By Cr.P.C. (Amendment) Act, 2005, offence under Section 324 IPC has been made non-compoundable offence. Prior to the aforesaid amendment, offence under Section 324 was compoundable. Learned counsel for the appellants is right in his submissions that on the date when offence was committed, i.e., 04/05.05.1985, the offence under Section 324 IPC was compoundable. We, thus, need to examine as to whether in the present case, the request of the appellants to which

learned counsel appearing for the legal representative of the deceased have also agreed need to be accepted and this Court may permit compounding of offence under Section 324 IPC.

29. The offence under Section 324 in the facts of the present case can be compounded only with permission of the Court. Sub-Section (5) of Section 320 provides that "no composition for the offence shall be allowed without the leave of the Court." Thus, the composition of the offence in the facts of the present case is not permissible only on the agreement on the request of the appellant which may be also accepted by the legal heirs of the deceased but composition is permissible only by the leave of the Court.

30. The grant of leave as contemplated by sub-section (5) of Section 320 is not automatic nor it has to be mechanical on receipt of request by the appellant which may be agreed by the victim. The statutory requirement, makes it a clear duty of the Court to look into the nature of the offence and the evidence and to satisfy itself whether permission should be or should not be granted. The administration of criminal justice requires prosecution of all offenders by the State.

31. The prosecution by the State is the policy of law because all the offences are against the society. The offenders have to bring to the Courts and punish for their offences to maintain peace and order in the society. It is the duty of the prosecution to ensure that no offender goes scot-free without being punished for an offence. It is also the settled principle of law that innocent should not be punished.

32. The question arises as to while granting leave of the Court for composition of offence, what is the guiding factor for the Court to grant or refuse the leave for composition of offence. The nature of offence, and its affect on society are relevant considerations while granting leave by the Court of compounding the offence. The offences which affect the public in general and create fear in the public in general are serious offences, nature of which offence may be relevant consideration for Court to grant or refuse the leave. When we look into the conclusion recorded by the trial court and the High Court after marshalling the evidence on record, it is established that both the accused have mercilessly beaten the deceased in the premises of the Police Station. Eleven injuries were caused on the body of the deceased by the accused. As per the evidence of PW-1, which has been believed by the Courts below, the victim was beaten mercilessly so that he passed on, stool, Urine and started bleeding.

33. We may refer to a Division Bench Judgment of Nagpur High Court reported in Provincial Government, Central Provinces and Berar vs. Bipin Singh Choudhary, AIR (1945) Nagpur, Oudh, Peshawar & Sind 104, where the Division Bench consisted of Justice Vivian Bose(as he then was), had occasion to consider the provisions of Section 345 Criminal Procedure Code, 1898, which are pari materia provision to Section 320 Cr.P.C. In the above case, the Government had filed an appeal where sanction was accorded under Section 345(2) Cr.P.C. to the compounding of offence of cheating. The respondent accused in that case was found guilty of cheating. He had cheated a litigant. The accused was clerk in the High Court. He induced the complainant to pay him a sum of Rs. 2,000/- stating that accused would hand it over to one of the Judges in charge of the complainant's case as a bribe. Learned Magistrate has accorded sanction stating that complainant

and accused were friends and it would be pity to disturb their friendly relations with which public at large are not concerned and in which they are not interested.

34. The Division Bench of the High Court expressed its disagreement with the view taken by the Magistrate. The Court held that the matter was of a very great public concern. The Division Bench held following in the above case: -

> "...The matter is, however, aggravated when we find that the person who is said to have done the cheating is a clerk of the Court. All public servants attached to a Court are trustees and guardians of the honour and integrity of the Court. It is a matter of grave import if any of them attempts to extract an illegal gratification or extort money from those who seek access to the Courts, or endeavours to lead them astray and, by abusing his position, tries to enrich himself. Persons in this class of life are looked upon as persons of influence and of some authority by the ordinary ignorant public. If therefore they abuse the position of confidence in which they are placed by reason of their office, it becomes a matter of great public concern. In our opinion, it is perverse to consider otherwise. If ever there was a case in which composition should have been refused, this is such a case..."

35. The ratio of the judgment is that in event people holding public office abuse their position, it becomes a matter of great public concern. We fully endorse the above view of the Nagpur High Court.

36. Present is a case where the offence was committed by the in-charge of the Police Station, Purighat, as well as the Senior Inspector, posted at the same Police Station. The Police of State is protector of law and order. The people look forward to the Police to protect their life and property. People go to the Police Station with the hope that their person and property will be protected by the police and injustice and offence committed on them shall be redressed and the guilty be punished. When the protector of people and society himself instead of protecting the people adopts brutality and inhumanly beat the person who comes to the police station, it is a matter of great public concern. The beating of a person in the Police Station is the concern for all and causes a sense of fear in the entire society.

37. We may refer to the judgment of this Court in Yashwant and others vs. State of Maharashtra, (2019) 18 SCC 571, where this Court laid down that when the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. Following was laid down in paragraph 34: -

> "34. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "Sadrakshnaya Khalanighrahanaya" (Sanskrit: "To

> protect good and to punish evil"), which needs to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment on the accused herein."

38. The observations as quoted above are fully attracted in the facts of the present case. We, thus, are of the considered opinion that present is a case where this Court is not to grant leave for compounding the offences under Section 324 IPC as prayed by the counsel for the appellants. The present is a case where the accused who were police officers, one of them being in-charge of Station and other Senior Inspector have themselves brutally beaten the deceased, who died the same night. Their offences cannot be compounded by the Court in exercise of Section 320(2) read with sub-section (5). We, thus, reject the prayer of the appellants to compound the offence.

39. From the order which was passed by this Court on 17.12.2020, this Court has noticed the submission of the counsel for the appellants that they are ready to compensate the family of the deceased. The Court noticing the said statement had issued notice in the matter. The appellants have also deposited the amount of Rs.3.5 Lakhs each as offered by their counsel recorded in the order dated 17.12.2020.

40. The custodial violence on the deceased which led to the death is abhorrent and not acceptable in the civilized society. The offence committed by the accused is crime not against the deceased alone but was against humanity and clear violations of rights guaranteed under Article 21 of the Constitution. Although the High Court has awarded the compensation of Rs.3 Lakhs in favour of the legal representatives of the deceased. We are of the view that compensation awarded was not adequate.

41. We may further notice that this Court has taken the view that even when prayer for compounding of the offence is refused, the Court can consider in appropriate case, the question of sentence. We may refer to Gulab Das and others vs. State of Madhya Pradesh, (2011) 10 SCC 765. In the above case, the Court refused to compound the offence but the Court proceeded to interfere with the question of sentence. In paragraph 10, following was laid down:-

> "10. Having said that, we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants."

42. To the same effect is the another judgment of this Court in Ishwar Singh vs. State of Madhya Pradesh, (2008) 15 SCC 667, following was laid down in paragraph 12, 13 and 14:-

> "12. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence.

Section 320 of the Code of Criminal procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

13. In Jetha Ram v. State of Rajasthan, Murugesan v. Ganapathy Velar and Ishwarlal v. State of M.P. this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan such offence was ordered to be compounded.

14. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which the Court may keep in mind."

43. Looking to the facts that both the appellants are more than 75 years of age now, we are of the considered opinion that the ends of justice be served in reducing the sentence awarded for conviction under Section 324 IPC to six months instead of one year. Additionally the legal heirs of the deceased can be compensated by the compensation which has been offered and deposited by the appellant in this Court. Thus, sentence of one year is reduced to six months by awarding compensation of Rs.3.5 Lakhs each to the legal heir of the deceased in addition to the compensation awarded by the High Court. The compensation deposited in this Court shall be remitted to the trial court who may pay the same to the legal heirs of the deceased. The affidavit has been filed before us that the deceased had four sons, his wife is dead, the entire amount be disbursed equally to two sons who are alive and heirs of two deceased sons.

44. In result, the appeals are partly allowed. The sentence awarded to the appellants under Section 324 IPC of one year is reduced to six months with enhancement of compensation to Rs.3.5 lacs each in addition to compensation awarded by the High Court to be paid to the legal heirs of the deceased. The compensation to the legal heirs be paid as directed above.

.....J. (ASHOK BHUSHAN) .....J. (AJAY RASTOGI) New Delhi, February 11, 2021.