

BHAGWAN NARAYAN GAIKWAD

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v.

THE STATE OF MAHARASHTRA AND ORS.

(Criminal Appeal No (s). 1039 of 2021)

SEPTEMBER 20, 2021

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[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Penal Code, 1860 – s.326 – Voluntarily causing grievous hurt by dangerous weapons – Conviction under – Prosecution case that the appellant and other accused persons attacked the victim with a lethal weapon which chopped off his right arm and leg during the course of the crime – However, the victim survived with the immediate medical treatment – Trial Court convicted 12 accused persons including appellant – accused for the offence punishable u/s.326 r/w. s.149 IPC and each of them was sentenced to suffer 7 years rigorous imprisonment – Appeal before the High Court was collectively preferred by all the 12 accused persons, the High Court under its impugned judgment found the accused A3, A4, A10 and A12 including the present appellant (A1) guilty and because of lack of material against the other accused persons, they were acquitted under the impugned judgment – The appeal stood abated in respect of four accused persons, A3, A4, A10 and A12 – The appellant was sentenced to rigorous imprisonment for 5 years – Before the Supreme Court, the appellant confined his submissions for compounding the sentence for the reason that a compromise was entered between the appellant and the injured victim – Held: The substance of the compromise was completely superfluous in the mechanical form and nothing elicit about the earlier relations, if any, or when such cordial relations or what kind of family relations later on had developed, all such facts were completely missing and the contents were stereotyped – The compromise does not record satisfaction of this Court – The High Court had recorded sufficient reasons while convicting appellant u/s.326 IPC – The brutality of assault is apparent from the face of the record – The injured was crippled for life – The act of the appellant is unpardonable – Thus, there is no reason to interfere in the sentence awarded by the High Court.

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A **Dismissing the appeal, the Court**

- HELD:** 1. The substance of what has been referred to in the compromise and noticed by this Court, the statement of fact is completely superfluous in the mechanical form and nothing elicit about the earlier relations, if any, or when such cordial relations or what kind of family relations later on have been developed, all such facts are completely missing and the contents are stereotyped, appears to be copied from paragraph 6 of the judgment in *Mohd. Ibrahim Vs. State of Karnataka and Others* (Criminal Appeal No. 825 of 2018) decided by this Court on 5th July, 2018. [Para 23][89-H; 90-A-B]
2. In the recent judgment in *Murali*, this Court has taken into consideration not only the compromise but the other aggravating and mitigating circumstances in which the crime has been committed including the fact that the accused has undergone more than half the sentence and in totality of the facts and circumstances, this Court has interfered and molded the sentence. [Para 24][90-B-C]
3. While disposing of the appeal preferred at the instance of the present appellant, the High Court has recorded its sufficient reasons while convicting him under Section 326 IPC and not only the fact that it was a pre-meditated attempt of the appellant, he assaulted the victim with the sword and chopped off his right leg below the knee and right forearm below the elbow and the brutality is apparent on the face of record. [Para 26][90-E-F]
4. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but this Court does not find any legislative or judicially laid down guidelines to assess the trial Court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc. [Para 28][90-H; 91-A-B]

5. The compromise if entered at the later stage of the A
incident or even after conviction can indeed be one of the factor
in interfering the sentence awarded to commensurate with the
nature of offence being committed to avoid bitterness in the
families of the accused and the victim and it will always be better
to restore their relation, if possible, but the compromise cannot
be taken to be a solitary basis until the other aggravating and
mitigating factors also support and are favourable to the accused
for molding the sentence which always has to be examined in the
facts and circumstances of the case on hand. [Para 29][91-B-D]

6. This Court has not been able to record its satisfaction in B
reference to the kind of compromise which has now been obtained
and placed on record after 28 years of the incident and this Court
cannot be oblivious of the sufferings which the victim has suffered
for such a long time and being crippled for life and the leg and
arm of the victim are amputated in the alleged incident and since
then he has been fighting for life and is pursuing his daily chores
with a prosthetic arm and leg and has lost his vital organs of his
body and became permanently disabled and such act of the
appellant is unpardonable. [Para 30][91-D-E]

Ram Pujan and Others v. State of Uttar Pradesh (1973)

**2 SCC 456; Murali v. State represented by Inspector of C
Police (2021) 1 SCC 726; Mohd. Ibrahim v. State of
Karnataka and Others (Criminal Appeal No. 825 of D
2018) – referred to.**

Case Law Reference

(1973) 2 SCC 456 referred to **Para 11** F

(2021) 1 SCC 726 referred to **Para 11**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal
No.1039 of 2021.

From the Judgment and Order dated 10.06.2020 of the High Court G
of Judicature at Bombay in Criminal Appeal No.136 of 1996.

Mahesh Jethmalani, Sr. Adv., Pravin Satale, Ms. Gunjan Mangala,
Rajiv Shankar Dvivedi, Sushant Kumar Sarkar, Rishab Jain, Ms. Arti
Dvivedi, Advs. for the Appellant.

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A Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph, Vijay S. Khamkar, Shashibhushan P. Adgaonkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

RASTOGI, J.

B 1. Leave granted.

2. The instant appeal is directed against the judgment and order dated 10th June, 2021 passed by the High Court of Bombay in Criminal Appeal No. 136 of 1996 upholding conviction for the offence punishable under Section 326 IPC and sentenced to undergo rigorous imprisonment C for 5 years with a fine of Rs. 10,000/- and under Section 357 of Code of Criminal Procedure (CrPC) of Rupees Two Lakhs as a monetary compensation to the victim.

3. The prosecution case is that on 13th December 1993, at around 5.30 p.m., Subhash Yadavrao Patil (injured victim) was returning to D Malegaon from Tembhurni on bicycle. While he was near to the main road, the accused persons arrived there in the tractor and they started pelting stone at him. The stone hit his back and one of the accused gave a blow of *Satur* on his leg below the left knee. While he started running, he fell down and the present accused appellant gave blow by lethal weapon (sword) on his right leg below the knee and due to the brutal E blow, it was almost mutilated and while trying to avoid the blow of sickle, the injured tried to avoid by raising his right hand and the blow hit his right arm below the elbow due to which it was detached and there was profuse bleeding from the injuries and he was immediately taken to the hospital for medical assistance.

F 4. Dr. Vijay Shivram Upase (PW 8) who examined the victim deposed that when the patient was brought to the hospital, his lower right leg below knee was completely detached and severed and right arm below the elbow was hanging by the skin. He had bandaged the injuries only to stop bleeding and cover the wounds. That all the vessels G of the veins were open and arteries of injury no. 1 and 4 were cut. There was profuse bleeding and without immediate medical intervention, the cumulative effect of all the injuries suffered by the victim would have resulted into death. Injury nos. 1 and 4 were dangerous to life.

H 5. The injuries were not only brutal but the injured was left in such a critical condition that upon seeing him, PW 22 had immediately arranged

for recording his dying declaration by Dr. Pawale(PW 12) Special Executive Magistrate. PW 22 further stated that it would be only the strong will of the victim and with the immediate medical care that he could survive. The medical certificate-Ex.59 issued by the Primary Health Centre, Tembhurni, shows the injuries as follows:-

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i. Sharp amputated cut over right lower leg 1/3rd. It was B completely cut.
- ii. Incised wound over 1/2 above injury no.1 front part, size 4½" x ½".
- iii. Incised wound ½ % above injury No.1 outer side, 1"x ¼".
- C
iv. Sharp amputated cut over 1" below right fore arm, middle part, arm completely cut.
- v. Incised abrasion left side back of ear ¼" x ¼".

6. Initially, 12 accused persons faced the trial and were convicted by the learned trial Judge for offence punishable under Section 326 read with Section 149 IPC for causing grievous hurt to Subhash Yadavrao Patil (PW-7) and each of them was sentenced to suffer 7 years R.I. and fine in sum of Rs. 1000/- each, in default, to suffer R.I. for the period of six months by judgment dated 26th February, 1996. On appeal being preferred collectively by all the 12 accused persons, the High Court under its impugned judgment dated 10th June, 2021 found the accused A3, A4, A10 and A12 including the present appellant (A1) guilty and because of lack of material against the other accused persons, they were acquitted under the impugned judgment. The appeal stood abated in respect of four accused persons, A3, A4, A10 and A12.

7. The submission made before the High Court by learned counsel for the appellant was that the incident is of the year 1993 and the appellant was on bail during trial and also pending appeal before the High Court and to revert back to suffer substantive sentence after 28 years would be unjustified but his contention was repelled after assigning reasons in the impugned judgment:-

“30. It was the specific submission by the respective counsel appearing for the appellants that the incidence is of the year 1993 and that the appellants are on bail since 1996 and that, to revert them back to suffer substantive sentence would be unjustified after 23 years. However, the court cannot be oblivious of the fact H

- A that the complainant has survived in the hope of justice with a prosthetic arm and leg for all these years and his hand and leg had to be amputated.
- B 35. The victim has been crippled for life. It is true that he is pursuing his daily chores with a prosthetic arm and leg but he has lost his vital organs of his body. The doctors who had examined PW7 have clearly stated that in the absence of immediate treatment, the death was certain. There is no reason to doubt the testimony of the victim which is duly corroborated by the PW8.”
- C 8. This was the primary reason for which while upholding conviction under Section 326 IPC, the appellant is sentenced to rigorous imprisonment for 5 years and to pay under Section 357 CrPC of Rs. 2 lakhs as a monetary compensation to the victim.
- D 9. The application for exemption from surrendering was rejected by the learned Chamber Judge by an Order dated 14th July, 2021. Only thereafter, the appellant has surrendered on 5th August 2021. It is informed to this Court that he has undergone the actual sentence by this time of 5 months.
- E 10. The record indicates that no notice was issued by this Court and when the matter was listed for admission, Mr. Mahesh Jethmalani, learned senior counsel for the appellant has not argued on merits and confined his submission for compounding the sentence for the reason that a compromise has been entered between the appellant and the injured victim and in support thereof, a compromise affidavit of the victim dated 13th July, 2021 has been placed on record to justify that the victim has no desire to make the appellant undergo the remaining sentence and keeping
- F in view the peace and harmony between the families, it has been requested by the complainant victim to compound the offence and submits that the appellant be released on the sentence undergone.
- G 11. Learned senior counsel on the strength of the compromise affidavit placed on record submits that when the parties have settled their disputes amicably and the relations of the families are very cordial and they are now closely related having matrimonial relations with each other's family and the incident has occurred due to misunderstanding and on the spur of the moment and submitted that the parties have jointly prayed, in the interest of peace and harmony between both the families and as requested by the complainant to compound the offence and in the
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interest of justice, he may be released on the sentence undergone and has placed reliance on the judgment of this Court in Ram Pujan and Others Vs. State of Uttar Pradesh¹ and Murali Vs. State represented by Inspector of Police².

12. Learned counsel for the complainant has joined hands with the appellant and submits that a joint affidavit has been filed by the injured complainant (PW-7) and he has been instructed to inform this Court that in terms of Para 3 of the affidavit of the injured victim, the parties have restored their cordial relations and also prays that the appellant be released on the period of sentence undergone.

13. Per contra, Mr. Sachin Patil, learned counsel for the State opposed the request made by the appellant and submits that the ultimate object of the criminal justice system is to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is always expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be and proceeding on such premise, of alleged compromise obtained after the impugned judgment of the High Court dated 10th June, 2021 upholding conviction under Section 326 IPC and sentenced to undergo 5 years of rigorous sentence, such compromise after 28 years of the incident, according to him, is obtained by coercion or inducement not only to harm the criminal justice system but it undermines the public confidence of the efficacy of law and society.

14. Learned counsel further submits that the learned trial Judge and also the High Court, while imposing sentence, has taken note of the nature of the incident, their related factors in which the crime has been committed and has delicately balanced the relevant circumstances in a dispassionate manner which ordinarily is not to be interfered because of the alleged compromise being obtained and cordial relations overnight are developed after 28 years of the incident.

15. Learned counsel further submits that the incident is of 13th December 1993, the learned trial Judge convicted the accused by its judgment dated 26th February, 1996 and appeal was preferred before the High Court at the instance of the appellant in the year 1996 which came to be decided in June, 2021, and the appellant was on bail throughout,

¹ 1973(2) SCC 456

² 2021(1) SCC 726

- A cordial relations between the families never came forward but only after conviction has been upheld and the appellant now has to undergo sentence, such compromise affidavit has been placed on record to justify in avoiding sentence which ordinarily attaches no credence and submits that the compromise affidavits which are being filed, its bonafide and genuineness is to be recorded in the facts of each case and submits that looking to the injury of permanent disability which the complainant has suffered, the present appellant despite a shield of compromise on record deserves no indulgence.

16. We have given our thoughtful consideration to the arguments advanced on behalf of the parties and with their assistance perused the material available on record.

- 17. It is not in dispute that the offence punishable under Section 326 IPC is non-compoundable as per Section 320 CrPC. The case of the prosecution is that the appellant attacked the injured victim (PW-7) with a lethal weapon(sword) which had caused permanent nature of disability and the brutality is apparent on the face of record. His right arm and leg were chopped off during the course of crime which occurred on 13th December, 1993. It was only because of the strong will and immediate medical treatment extended to the victim that he could survive. It was even stated by the treating Doctor that in the absence of immediate medical treatment, his death was certain.

18. After going through the record of the case and the concurrent finding of fact which has been recorded by the learned trial Judge and confirmed by the High Court in the impugned judgment, although no submissions have been made by the learned counsel for the appellant on merits of the matter but still for our own satisfaction, we have gone through the record and in our considered view, the appellant has been rightly held guilty and convicted for offence under Section 326 IPC.

- 19. Learned counsel for the appellant has restricted his submission only for sentencing taking defence of the compromise dated 13th July, 2021 entered into between the parties but the fact is that after he has been convicted under Section 326 IPC and sentenced to 5 years rigorous imprisonment under the impugned judgment of the High Court dated 10th June 2021, all such family relations came on the ground and he has hardly undergone 5 months of sentence as on the date as informed to this Court.

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20. This Court considers it appropriate to extract para 3 of the compromise affidavit filed by the victim dated 13th July, 2021 as follows:- A

“3. That the deponent further submits that the incident in question took place on 13/12/1993 i.e., almost before 28 years due to misunderstanding and in the spur of moment. The petitioner and the deponent to the same clan and they all have in same Village and with passage of time, the relations between the petitioner and the deponent have become very cordial. The petitioner and the deponent are now very closely related and are having matrimonial relations with each other family. The petitioner’s and deponent’s families participate in the functions of each other’s. With the huge time gap, the grudges amongst each other have vanished away and have taken a shape of friendship. The petitioner is 65 year old person suffering from heart disease and requires medical help and attention regularly. They have old age parents wife and children to look after, their entire family would suffer irreparable loss if the petitioner go behind the bars at this stage. The petitioner has suffered imprisonment at the time of trial as well as after conviction till the time bail was granted to him by the trial court and high court. The deponent does not have a slightest desire to make the petitioner undergo the remaining sentence. Therefore, in the interest of both the parties and so also in the interest of the peace and harmony between both the families, the complainant has filed this affidavit permission to compound the offence.” C D E

21. The three-Judge Bench of this Court in ***Ram Pujan and Others*** (supra) and ***Murli*** (supra) has recorded its satisfaction that the compromise has not been obtained out of coercion and inducement and entered with free will without any reservation/caveat certainly be acted upon and can be one of the mitigating factor to be considered by altering the sentence in question. F

22. We are in full agreement on legal principles and on facts which has been noticed by this Court in the judgment referred to supra. But we are not being able to record our satisfaction on the contents of the compromise which has been obtained overnight after conviction under Section 326 IPC being confirmed by the High Court under the impugned judgment for the incident of December 1993. G

23. The substance of what has been referred to in paragraph 3 of the compromise and noticed by us, the statement of fact is completely H

- A superfluous in the mechanical form and nothing elicit about the earlier relations, if any, or when such cordial relations or what kind of family relations later on have been developed, all such facts are completely missing and the contents are stereotyped, appears to be copied from paragraph 6 of the judgment in ***Mohd. Ibrahim Vs. State of Karnataka and Others*** (Criminal Appeal No. 825 of 2018) decided by this Court on 5th July, 2018.
- 24. In the recent judgment in ***Murali*** (supra), this Court has taken into consideration not only the compromise but the other aggravating and mitigating circumstances in which the crime has been committed
- C including the fact that the accused has undergone more than half the sentence and in totality of the facts and circumstances, this Court has interfered and molded the sentence.
- 25. In the facts and circumstances of the given case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances of which the crime D has been committed are to be taken into consideration and to be delicately balanced on the basis of the relevant circumstances in a dispassionate manner by the Court.
- 26. While disposing of the appeal preferred at the instance of the present appellant, the High Court has recorded its sufficient reasons E while convicting him under Section 326 IPC and not only the fact that it was a pre-meditated attempt of the appellant, he assaulted the victim with the sword and chopped off his right leg below the knee and right forearm below the elbow and the brutality is apparent on the face of record.
- F 27. This Court cannot be oblivious of this fact that the injured victim has been crippled for life and pursuing his daily chores with the prosthetic arm and leg and has lost vital organs of the body and became permanently disabled. This has been stated by PW 8 that in the absence of immediate medical attention, death was certain and that was the reason
- G his dying declaration was also recorded during that point of time, in our considered view, such a brutality cannot be ignored which is not against the individual but the crime is against the society which has to be dealt with sternly.
- 28. Giving punishment to the wrongdoer is the heart of the criminal H delivery system, but we do not find any legislative or judicially laid down

guidelines to assess the trial Court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc.

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29. The compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand.

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30. As already observed, we have not be able to record our satisfaction in reference to the kind of compromise which has now been obtained and placed on record after 28 years of the incident and this Court cannot be oblivious of the sufferings which the victim has suffered for such a long time and being crippled for life and the leg and arm of the victim are amputated in the alleged incident dated 13th December, 1993 and since then he has been fighting for life and is pursuing his daily chores with a prosthetic arm and leg and has lost his vital organs of his body and became permanently disabled and such act of the appellant is unpardonable.

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31. In totality of the facts and circumstances of the case, we are not inclined to give any benefit of the alleged compromise dated 13th July, 2021 for interfering in the sentence awarded by the High Court in the impugned judgment which at least does not call for interference of this Court.

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32. As a result, the appeal is dismissed accordingly.

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33. Pending application(s), if any, stand disposed of.

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