Nanda Gopalan vs State Of Kerala on 24 April, 2015

Equivalent citations: 2015 AIR SCW 3112, 2015 (11) SCC 137, AIR 2015 SC(CRI) 1404, 2015 (3) AJR 460, AIR 2015 SC (SUPP) 1256, (2015) 2 JLJR 557, (2015) 2 UC 1025, (2015) 3 CRIMES 55, (2015) 2 ALLCRILR 808, (2015) 2 CRILR(RAJ) 635, (2015) 90 ALLCRIC 716, (2015) 2 CURCRIR 353, (2015) 3 KCCR 303, (2015) 5 SCALE 545.2, (2015) 61 OCR 941, (2015) 3 PAT LJR 121, 2015 CRILR(SC MAH GUJ) 635, (2016) 1 MADLW(CRI) 343, (2015) 151 ALLINDCAS 167 (SC), (2015) 2 RECCRIR 861, 2015 CRILR(SC&MP) 635

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Bench: Adarsh Kumar Goel, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 714 OF 2015
(ARISING OUT OF SLP (CRL.) NO.431 OF 2015)

NANDA GOPALAN …APPELLANT

VERSUS

STATE OF KERALA …RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. Leave granted. This appeal has been preferred against judgment and order dated 31st October, 2014 passed by the High Court of Kerala at Ernakulam in Criminal Appeal No.285 of 2003.

2. The appellant stands convicted under Sections 324 and 326 of the Indian Penal Code ("IPC") and sentenced to undergo rigorous imprisonment for two years and three years respectively and to pay fine of Rs.30,000/- to the injured as compensation. The appellant is son of cousin of injured Sukumaran (PW1).

3. Prosecution case is that on 14th May, 1999 at 7.30 a.m., the appellant attacked PW 1 by using a bat made of coconut leaf stem. PW 1 fell down on receiving the blow. The appellant sat on the chest of PW 1 and caused injuries with a stone. PW 1 became unconscious. He was admitted to Medical Trust Hospital, Ernakulam, wherein he remained indoor patient for 32 days. PW 10, Dr. Anandam

Radhakrishnan, Casualty Medical Officer in the said hospital examined PW 1 at 8.45 a.m. and found following injuries as per Exhibit P5 :

> "(1) 4 x 1 cms through and through lacerated wound over left angle of the mouth extending upwards exposing left upper gum. The second, third and fourth teeth on the upper gum missing.
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> (2) 4 x .5 x .5 cms lacerated wound over the lateral half of the left eyebrow with 1 cm long two extensions upwards.
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> (3) 1 x .25 x .25 cm incised wound over the bridge of nose vertically placed.
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> (4) Irregular tear of right pinna of the ear exposing cartilage.
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> (5) Contusion over the right angle of the mandible.
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> (6) Contusion with swelling over left maxilla with two bleeding lacerated wound over it."

4. PW 2 recorded the First Information Report and conducted investigation and sent up the appellant for trial. The prosecution examined not only the injured PW 1, but also PWs 2 and 3, his sons and PW 8 his wife, apart from independent witnesses PWs 4, 5 and 6. In addition, medical evidence and relevant documents were also produced.

5. The trial court held the case of the prosecution to have been proved and convicted and sentenced the appellant which has been affirmed by the High Court with reduction in sentence. During pendency of the appeal in the High Court, a settlement was reached between the parties and an application was moved before the High Court for compounding the offence under Section 324 and for quashing the charge under Section 326 on the basis of compromise. The application was dismissed on the ground that non compoundable offence could not be settled between the parties.

6. We have heard Shri Ram Jethmalani, learned senior counsel who has appeared as amicus curiae on the request of the court and Shri Jogy Scaria, learned counsel for the State of Kerala.

7. Shri Jethmalani submitted that though the offence under Section 326 could not be compounded, the compromise could be taken into account for reducing the sentence. He further submitted that since the weapon used in the present case was not of the nature specified under Sections 324 and 326, the charge could be altered to Sections 323 and 325. Offence under Sections 323 is compoundable and 325 is compoundable with the permission of the court. Shri Jethmalani has drawn the attention of the Court to the judgments in Dasan vs. State of Kerala and another[1], Mathai vs. State of Kerala[2] and Regina vs. Bibi[3].

8. Learned counsel for the State opposed the above submissions. According to him, the conviction under Sections 324 and 326 has been rightly recorded and no interference is called for by this Court.

9. While we have no difficulty in holding that taking into account the compromise between the parties particularly when they are close relatives, reduction in sentence can be ordered, we do no find any ground to interfere with the conviction of the appellant.

10. In Mathai, it was held :

> "16. The expression "any instrument which, used as a weapon of offence, is likely to cause death" (Section 326) has to be gauged taking note of the heading of the section. What would constitute a "dangerous weapon" would depend upon the facts of each case and no generalisation can be made.
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> 17. The heading of the section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are: (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means.

As was noted by this Court in State of U.P. v. Indrajeet [2000 (7) SCC 249] there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. As noted above, the evidence of the doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression "grievous hurt" as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. It is not that in every case a stone would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that in some provisions e.g. Sections 324 and 326 the expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable."

11. The matter was again considered in Anwarul Haq vs. State of U.P.[4]:

> "11. ……. The plea that the weapon used was not a dangerous weapon had never been urged before the trial court or the High Court. Whether weapon is a dangerous weapon or not has to be gauged only on the factual basis. As there was no challenge on this aspect by the accused before the courts below, that plea for the first time cannot be permitted to be raised in this Court.

12. Section 324 provides that "[w]hoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a 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" can be convicted in terms of Section 324. The expression

"any instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this section.

13. The section prescribes a severer punishment where an offender voluntarily causes hurt by dangerous weapon or other means stated in the section. The expression "any instrument which, used as a weapon of offence, is likely to cause death" when read in the light of marginal note to Section 324 means dangerous weapon which if used by the offender is likely to cause death.

14. Authors of IPC observed, as noted below, the desirability for such severer punishment for the following reasons:

> "... Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting an injury, as laceration with a knife, or branding [pic]with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of a society than who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous ought yet, on account of the mode in which are inflicted, to be punished more severely than many grievous hurts."
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> 12. In the present case, neither in the courts below plea that weapon was not dangerous raised nor any evidence led in absence of which we are unable to interfere with the finding of the courts below on the nature of charge or to hold that the nature of weapon used does not fall under Sections 324 and 326.
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> 13. As regards the sentencing policy, it is well settled that just and appropriate sentence has to be imposed keeping in mind the proportion between crime and punishment and having regard to the facts and circumstances of each case particularly, the nature of offence, the sentence prescribed, mitigating and extenuating and other attending circumstances. In State of M.P. vs. Ghanshyam Singh[5] , it was observed :
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> "13. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime.

Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law [pic]only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US 183] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished".

14. In Dasan, it was observed :

"7. Section 320 of the Criminal Procedure Code ("the Code") pertains to offences punishable under the Penal Code only. It states which offences can be compounded, by whom they can be compounded and which offences can be compounded only with the permission of the concerned court. Sub-sections 3 to 8 thereof further clarify how Section 320 of the Code operates. Sub- section 9 thereof states that no offence shall be compounded except as provided by this section. The legislative intent is, therefore, clear. Compounding has to be done strictly in accordance with Section 320 of the Code. No deviation from this provision is permissible."

15. In Bankat vs. State of Maharashtra[6], it was observed :

"11. In our view, the submission of the learned counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete

scheme is provided under Section 320 of the Code. Sub- section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, sub-section (9) specifically provides that "no offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

12. Further, the decision in Ram Pujan case [1973 (2) SCC 456] does not advance the contention raised by the appellants. In the said case, the Court held that the major offences for which the accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in [pic]determining the quantum of sentence. In Ram Lal case [1999 (2) SCC 213] the Court referred to the decision of this Court in Y. Suresh Babu v. State of A.P. [2005 (1) SCC 347] and to the following observations made by the Supreme Court in Mahesh Chand case [(1990) Supp.

SCC 681] (SCC p. 682, para 3) :

"3. We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and the circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence." and held as under: (SCC p. 214, para 3) "We are unable to follow the said decision as a binding precedent. Section 320 which deals with 'compounding of offences' provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else."

13. In the case of Y. Suresh Babu the Court has specifically observed that the said case "shall not be treated as a precedent". The aforesaid two decisions are based on facts and in any set of circumstances, they can be treated as per incuriam as pointed attention of the Court to sub-section (9) of Section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326."

16. In view of the above, we are inclined to reduce the sentence of imprisonment of the appellant to the period already undergone, while increasing the amount of compensation to Rs.2 lakhs to be paid to the victim within three months, failing which the sentence awarded by the High Court will stand affirmed.

17. The appeal is disposed of in above terms.

.....J. [J. CHELAMESWAR] .....J. [ADARSH KUMAR GOEL] NEW DELHI APRIL 24, 2015

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[1] 2014 (12) SCC 666
[2] 2005 (3) SCC 260
[3] 1980 (1) WLR 1193
[4] 2005 (10) SCC 581
[5] 2003 (8) SCC 13
[6] (2005) 1 SCC 343
