

[2015] 4 S.C.R. 563

NANDA GOPALAN

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v.

STATE OF KERALA

(Criminal Appeal No. 714 of 2015)

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APRIL 24, 2015

**[J. CHELAMESWAR AND ADARSH
KUMAR GOEL, JJ.]**

Penal Code, 1860: ss.324 and 326 – Allegation that accused-appellant attacked PW-1 with a bat and as a result PW-1 fell down and then appellant sat on his chest and caused injuries to him with a stone – Trial court accepted prosecution version and convicted and sentenced the appellant which was affirmed by High Court with reduction in sentence – During pendency of appeal in High Court, a settlement was reached between the parties and an application was moved before the High Court for compounding the offence u/s.324 and for quashing the charge u/s.326 on the basis of compromise – Application dismissed on ground that non compoundable offence could not be settled between the parties – On appeal, Held: The plea that weapon was not dangerous was neither raised in the lower courts nor any evidence was led in that regard and in absence thereof, finding of courts below on nature of charge cannot be interfered with, however in view of compromise between the parties particularly when they are close relatives, reduction in sentence is ordered – The sentence of imprisonment of appellant reduced to the period already undergone, while the amount of compensation increased to Rs.2 lakhs to be paid to the victim.

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A Disposing of the appeal, the Court

HELD: In the present case, neither in the courts below, the plea that weapon was not dangerous was raised nor any evidence was led, in absence of which the finding of the courts below on the nature of charge is not interfered with nor it is held that the nature of weapon used did not fall under Sections 324 and 326. 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 view of that, the sentence of imprisonment of the appellant is reduced to the period already undergone, while the amount of compensation is increased to Rs.2 lakhs to be paid to the victim. [Paras 12, 13, 16] [571-A-C] [575-D]

E *Dasan vs. State of Kerala and Anr.* 2014 (12) SCC 666; *Mathai vs. State of Kerala* 2005 (3) SCC 260: 2005 (1) SCR 450; *Anwarul Haq vs. State of U.P.* 2005 (10) SCC 581: 2005 (3) SCR 917; *State of M.P. vs. Ghanshyam Singh* 2003 (8) SCC 13:2003 (3) Suppl. SCR 618; *Bankat vs. State of Maharashtra* (2005) 1 SCC 343: 2004 (6) Suppl. SCR 406 – relied on.

Regina vs. Bibi 1980 (1) WLR 1193 – referred to.

G Case Law Reference

	2014 (12) SCC 666	relied on.	Para 7
	2005 (1) SCR 450	relied on.	Para 7
H	1980 (1) WLR 1193	referred to.	Para 7

2005 (3) SCR 917 **relied on.** **Para 11** **A**

2003 (3) Suppl. SCR 618 **relied on.** **Para 13**

2004 (6) Suppl. SCR 406 **relied on.** **Para 15**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal **B**
No. 714 of 2015.

From the Judgment and Order dated 31.10.2014 of the High Court of Kerala at Ernakulam in CrI.A.No. 285 of 2003.

Ram Jethmalani (AC), Karan Kalia, Pranav Diesh, P. R. Mala, Shinoj K. Narayanan, K. Rajeev, Vipin Narayan for the Appellant. **C**

Jogy Scaria, Joyti Mishra, Kaushal Yadav, Regan S. Bel for the Respondent. **D**

The Judgment of the Court was delivered by

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. **E**

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). **F**

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 **G**
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A 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 :

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"(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.

(4) Irregular tear of right pinna of the ear exposing cartilage.

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(5) Contusion over the right angle of the mandible.

(6) Contusion with swelling over left maxilla with two bleeding lacerated wound over it."

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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.

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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,

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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 another¹, Mathai vs. State of Kerala² and Regina vs. Bibi³.

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

1 2014 (12) SCC 666

2 2005 (3) SCC 260

3 1980 (1) WLR 1193

A account the compromise between the parties particularly when they are close relatives, reduction in sentence can be ordered, we do not find any ground to interfere with the conviction of the appellant.

B 10. In *Mathai*, it was held :

C *“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.*

D *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*

E *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*

F *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*

G *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*

H *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

A *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
B *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.

C **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
D *death.*

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

F *“... 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
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
G *hurts.”*

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12. In the present case, neither in the courts below plea A
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. B

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 C
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 :

*“13. Criminal law adheres in general to the principle D
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 E
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 F
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 G
departure from just deserts as the basis of punishment
and create cases of apparent injustice that are serious
and widespread.*

A **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
B societies, but such a radical departure from the
principle of proportionality has disappeared from the
law only in recent times. Even now for a single grave
infraction drastic sentences are imposed. Anything less
C 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
D 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
E 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
F been very aptly indicated in *Dennis Council*
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
G 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
H 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". A

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." B
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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 E
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A *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
B *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
C *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
determining the quantum of sentence. In Ram Lal case
[1999 (2) SCC 213] the Court referred to the decision
D *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) :

E *"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
F *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)

G *"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,
H *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. A

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.* B C

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. D

17. The appeal is disposed of in above terms. E

Devika Gujral

Appeal disposed of.

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