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VINAY & ORS.

v.

STATE OF KARNATAKA & ANR.

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(Criminal Appeal No. 644 of 2015)

APRIL 16, 2015

[T. S. THAKUR AND R. BANUMATHI, JJ.]

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Penal Code, 1860 – ss. 326 and 427 r/w. s. 34 – Dispute between two brothers – Five injured eye-witnesses – Injuries also sustained by accused party – Conviction u/ss. 307 and 427 r/w. s.34 by trial court sentencing the accused for 3 years and 6 months RI respectively – High Court modified the conviction u/s. 307 to one u/s. 326 while upholding conviction u/s. 427 – The sentence was reduced from 3 years to 3 months and from 6 months to 3 months – On appeal, held: In view of the consistent version of injured eye-witnesses, supported by medical evidence, conviction upheld – However, in view of the relationship between the parties, nature of injuries, counter allegations by both the parties and in view of the fact that 13 years have passed since the incident, sentence of 3 months is reduced to the period already undergone – In addition to the fine imposed by High Court, Rs. 25,000/- imposed as fine with direction to pay the amount to the victims as compensation u/s. 357(1) Cr.P.C. – Code of Criminal Procedure, 1973 – s. 357(1).

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Partly allowing the appeal, the Court

HELD: 1. Complainant and his associates have consistently deposed about the incident and the attack on them by the appellants with sickles and the injuries

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sustained by them. The testimony of the injured witnesses is also supported by the medical evidence. As the appellants wielded deadly weapons, namely, sickles and talwars and that PWs 1, 3, 4 and 5 have sustained grievous injuries, the High court rightly convicted the appellants under Section 326 IPC r/w Section 34 IPC and under Section 427 IPC r/w Section 34 IPC. [Para 8] [430-A-E]

2.1 There was animosity between two factions which led to attack and injuries on both sides. Nature of injuries on the person of complainant and the complainant party and the accused party suggested that both parties attacked each other and the appellants seem to have exceeded the right of private defence, if any. After the occurrence, more than thirteen years have passed, the complainant party and the accused are entangled in litigation. Considering the totality of facts and circumstances of the case and the relationship between the parties, interest of justice would be met by reducing the sentence and imposing fine. [Para 9] [431-B-D]

2.2 Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. The amount of compensation is to be determined by the courts depending upon the facts and circumstances of each case, nature of the offence and the capacity of the accused to pay. Considering the facts and circumstances of the present case and the nature of the offence, sentence of imprisonment of three months imposed on the appellants is reduced to the period already undergone by them and also imposing a fine of

A **Rs.25,000/- so as to compensate the injured witnesses in addition to the compensation awarded by the High Court. [Para 10] [431-E; 433-E-G]**

B *Hari Singh v. Sukhbir Singh & Ors. (1988) 4 SCC 551: 1988 (2) Suppl. SCR 571; Ankush Shivaji Gaikwad vs. State of Maharashtra (2013) 6 SCC 770: 2013 (8) SCR 863 – relied on.*

C **2.3 Out of the fine amount to be deposited by the appellants—accused, the injured witnesses PWs 1, 3, 4 and 5 who sustained grievous injuries shall be paid compensation of Rs.17,500/- each and PW 2, who suffered simple injuries shall be paid compensation of Rs. 5,000/-. [Para 11] [434-B-C]**

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Case Law Reference

1988 (2) Suppl. SCR 571 **relied on.** **Para 10**

E **2013 (8) SCR 863** **relied on.** **Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 644 of 2015

F **From the Judgment and Order dated 30.11.2011 of the High Court of Karnataka Circuit Bench at Dharwad in Criminal Appeal No. 515 of 2010**

R. S. Hegde, Shanti Prasad, Rajeev Singh for the Appellants.

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V. N. Raghupathy, for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

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2. This appeal arises out of the judgment dated 30.11.2011 passed by the High Court of Karnataka, Circuit Bench at Dharwad in Criminal Appeal No.515/2010 modifying the conviction of the appellants from Section 307 IPC read with Section 34 IPC to Section 326 IPC read with Section 34 IPC reducing the sentence of imprisonment from three years to three months and confirming the conviction under Section 427 IPC read with Section 34 IPC, thereby reducing the sentence of imprisonment imposed on each of the accused from six months to three months further directing the sentences to run concurrently and imposing a fine of Rs.10,000/-.

3. The appellants and the complainant-Vishveshwar Parameshwar Hegde (PW-1) are the real brothers and are children of Smt. Bharati (PW-8). Due to quarrel with the appellants, PW-1 voluntarily left the parental house and started living separately. On 23.12.2001, complainant-Vishveshwar Parameshwar Hegde (PW-1) along with four persons viz., PW-2 Chandru V. Bhat, PW-3 Kiran R. Bhat, PW-4 Chandranath V. Bhat, and PW-5 Madhukar L. Hegde came in a Maruti car to his parental house in order to remove the almirah and his other personal belongings, for which the appellants objected which resulted in quarrel between the parties. In the heat of moment, appellant No.1 hit the complainant with club and when PWs 2 to 5 came to PW-1's rescue, they were also indiscriminately attacked by all the three appellants with chopper and sickles. The appellants also damaged the car glasses and tyres, in which PW-1 came along with his associates. In the scuffle, the appellants also received simple injuries. PW-1 and other injured witnesses somehow got themselves rescued and were admitted in the Government Hospital, Sirsi. Based on the statement of PW-1, on the same day, F.I.R. was registered in Crime No. 146/2001 with the Sirsi Rural Police Station for the offences punishable under Sections

A 307, 324, 326, 427, and 506 IPC read with Section 34 IPC. PW-14 Investigating Officer had taken up the investigation and went to the place of occurrence and recovered the weapons of assault (MOs 1 to 3) and drew the spot panchnama, arrested the accused-appellants and seized the blood stained clothes of the appellants. After completion of investigation by PW-14, charge sheet came to be filed against the appellants for the aforesaid offences. Case was committed to the Sessions Court and charges under Sections 307, 427 IPC read with Section 34 IPC were framed against the accused-appellants. To prove their case, prosecution examined 14 witnesses and exhibited 26 documents and 15 material objects.

4. Upon appreciation of the evidence on record, trial court arrived at the conclusion that the nature of weapons and nature of grievous injuries caused to the injured witnesses (PWs 1 to 5) would show the intention and knowledge of the appellants—accused to kill the complainant and his associates and by its judgment dated 29.4.2010 convicted the appellants for the offences punishable under Sections 307 and 427 IPC read with Section 34 IPC. Each of the appellants were sentenced to undergo rigorous imprisonment for three years with a fine of Rs.4,000/- with default clause for offence under Section 307 IPC read with Section 34 IPC. For the conviction under Section 427 IPC read with Section 34 IPC, appellants were sentenced to undergo rigorous imprisonment for six months with fine of Rs.5,000/- each with default clause.

5. Appellants being aggrieved by their conviction and sentence, filed appeal before the High Court of Karnataka, Circuit Bench at Dharwad. State being aggrieved by the inadequate sentence awarded to the appellants under Section 307 IPC, preferred cross appeal for enhancement of the sentence. By the common judgment dated 30.11.2011, the

High Court partly allowed the appeal of the appellants and modified the conviction of the appellants from Section 307 IPC read with Section 34 IPC to Section 326 IPC read with Section 34 IPC and accordingly reduced the sentence of imprisonment to three months and dismissed the appeal of the State. High Court confirmed the conviction of the appellants under Section 427 IPC read with Section 34 IPC and reduced the sentence of imprisonment to three months. In addition, High Court also imposed a fine of Rs. 10,000/- on each of the appellants to be paid as compensation to the injured. Being aggrieved, this appeal has been filed by the appellants challenging their conviction and sentence of imprisonment.

6. Learned counsel for the appellants submitted that the complainant accompanied by his associates (PWs 2 to 5) armed with weapons trespassed into the house of the appellants in breach of subsisting injunction order passed against them and the appellants acted in their right of self-defence in protection of their property which aspect was not properly appreciated and the courts below erred in convicting the appellants under Sections 326 and 427 IPC read with Section 34 IPC.

7. We have heard the learned counsel for the respondent-State who supported the judgment of the High Court.

8. Admittedly, there is long standing dispute between the real brothers. The presence of the parties at the place of occurrence is admitted by both the parties. Admittedly, on the date of occurrence, the complainant went to bring his Almirah kept in his parental house at Padageri and was conversing with his mother (PW-8). At that time, accused-appellants came armed with sickles and *talwars* (swords) and attacked PW-1 on his head and right hand. When PWs 2 to 5 tried to rescue

- A PW-1, they were also attacked by the appellants. Complainant and his associates have consistently deposed about the incident and the attack on them by the appellants with sickles and the injuries sustained by them. The testimony of the injured witnesses is also supported by the medical evidence. Dr.
- B Rama Hegde (PW-13) attached to Pandit Government Hospital, Sirsi where complainant was admitted and examined has stated that Kiran R. Bhat (PW-3), Chandranath V. Bhat (PW-4), Madhukar L. Hegde (PW-5), and Vishveshwar P.
- C Hegde (PW-1) had suffered grievous injuries and that same could be caused by sharp and blunt objects and to that effect he has issued wound certificates. The wound certificates show that complainant Vishveshwar P. Hegde (PW-1) and Kiran R. Bhat, Chandranath R. Bhat, Madhukar L. Hegde (PWs 3 to
- D 5) have sustained one grievous injury each and other injuries are simple in nature. Chandru V. Bhat (PW-2) has sustained simple injuries. As the appellants wielded deadly weapons, namely, sickles and talwars and that PWs 1, 3, 4 and 5 have sustained grievous injuries, the High Court rightly convicted
- E the appellants under Section 326 IPC read with Section 34 IPC and under Section 427 IPC read with Section 34 IPC.

9. So far as the contention regarding quantum of sentence, learned counsel for the appellants submitted that
- F the appellants and the complainant party are the real brothers and that in the sudden quarrel and in the heat of passion, both parties attacked each other and that the accused parties also sustained injuries and therefore prayed for reduction of sentence, which in our view, merits consideration. On the date
- G of occurrence, PW-1 along with his associates went to his parental house to remove the almirah and his belongings for which appellants objected which resulted in quarrel between the parties. The appellants-accused also suffered contusion and abrasion. Dr. Rama Hegde (PW-13) noted simple injuries
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on the person of the accused-appellants and issued wound certificates Ext.P22 to P24. In his cross-examination PW-13 also opined that injuries on the person of the accused could be caused by sharp and blunt objects. The complainant party went to the house of the accused for removal of Almirah and certain personal belongings. There was animosity between two factions which led to attack and injuries on both sides. Nature of injuries on the person of complainant and the complainant party and the accused party suggested that both parties attacked each other and the appellants seem to have exceeded the right of private defence, if any. After the occurrence, more than thirteen years have passed, the complainant party and the accused are entangled in litigation. Considering the totality of facts and circumstances of the case and the relationship between the parties, interest of justice would be met by reducing the sentence and imposing fine.

10. Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. After referring to *Hari Singh v. Sukhbir Singh & Ors.*, (1988) 4 SCC 551 and other decisions in *Ankush Shivaji Gaikwad vs. State of Maharashtra*, (2013) 6 SCC 770, this Court held as under:

“30. In *Hari Singh v. Sukhbir Singh*, ((1988) 4 SCC 551 this Court lamented the failure of the courts in awarding compensation to the victims in terms of Section 357(1) CrPC. The Court recommended to all courts to exercise the power available under Section 357 Cr PC liberally so as to meet the ends of justice. The Court said: (SCC PP.557-58, para 10)

“10. ...Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused.It is an

A important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way. (emphasis supplied)

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F 32. In *Sarwan Singh v. State of Punjab*, (1978) 4 SCC 111, *Balraj v. State of U.P.*, (1994) 4 SCC 29, *Baldev Sigh v. State of Punjab*, (1995) 6 SCC 593, *Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.*, (2007) 6 SCC 528 this Court held that the power of the courts to award compensation to victims under Section 357 is not ancillary to other sentences but in addition thereto and that imposition of fine and/or grant of compensation to a great extent must depend upon the relevant factors apart from such fine or compensation being just and reasonable. In *Dilip S. Dahanukar* case this Court even favoured an inquiry albeit summary in nature to determine the paying capacity of the offender. The Court said: (SCC p.545, para 38)

'38. The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way, may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but subsection (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a Judge."

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The amount of compensation is to be determined by the courts depending upon the facts and circumstances of each case, nature of the offence and the capacity of the accused to pay. Considering the facts and circumstances of the present case and the nature of the offence, sentence of imprisonment of three months imposed on the appellants is reduced to the period already undergone by them and also imposing a fine of Rs.25,000/- so as to compensate the injured witnesses in addition to the compensation awarded by the High Court.

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11. The conviction of the appellants under Section 326 IPC read with Section 34 IPC and Section 427 IPC read with Section 34 IPC is confirmed. Sentence of imprisonment of three months imposed on them is reduced to the period already

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- A undergone by each of them. Additionally, the fine of Rs.25,000/- is imposed on each of the appellants–accused and in default to undergo sentence of imprisonment of three months. Out of the fine amount to be deposited by the appellants–accused, the injured witnesses PWs 1, 3, 4 and 5 (Vishveshwar P. Hegde, Kiran R. Bhat, Chandranath V. Bhat and Madhukar L. Hegde) who sustained grievous injuries shall be paid compensation of Rs.17,500/- each and PW 2-Chandru V. Bhat who suffered simple injuries shall be paid compensation of Rs. 5,000/-. With the above modification, the appeal is allowed in part.

Kalpana K. Tripathy

Appeal partly allowed.

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