REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.24/2021
[Arising out of SLP (Crl.) 10813 of 2019]

Murali .....APPELLANT

VERSUS

State rep. by the Inspector of Police .....RESPONDENT

WITH

CRIMINAL APPEAL NO.25/2021
[Arising out of SLP (Crl.) 10814 of 2019]

Rajavelu .....APPELLANT

VERSUS

State rep. by the Inspector of Police .....RESPONDENT

ORDER

Leave granted.

2. These connected appeals have been preferred against the judgment dated 01.11.2018 of the High Court of Madras which upheld Murali's (*appellant in SLP (Crl) No 10813/2019*) conviction under Sections 324 and 34 of the Indian Penal Code, 1860 ("IPC") with a sentence of three

months' rigorous imprisonment, and Rajavelu's (*appellant in SLP (Crl) 10814/2019*) conviction under Sections 307 and 341 of IPC and sentence of five years' rigorous imprisonment.

3. The prosecution case, in brief, is that on 07.08.2005, one Senthil had a verbal altercation with Kumar (*original accused no. 3*) and Krishnan (*original accused no. 5*) during a volleyball match. The injured-victim (Sathya @ Sathiyajothi) came to the aid of his friend Senthil and opposed both Kumar and Krishnan. Thereafter at about 2:30PM on 09.08.2005, the appellants – Rajavelu and Murali (*original accused nos. 1 and 2*) along with Muthu, Kumar and Krishnan (*original accused nos. 3, 4 and 5*) cornered the victim and assaulted him. Murali allegedly struck the victim on his head with a hockey stick and Rajavelu tried to kill him by giving a neck blow with a *Veechu Aruval* (sharp-edged object), which was fortunately blocked by the victim. In the process, the left hand of the victim and the thumb and finger of his right hand got severed. The victim was able to escape and the matter was reported by his friend, PW-1. All five persons were arrested. It further led to registration of Crime No. 531 of 2005 under Sections 147,148,341,352, 323, 324, 307 and 34 of the IPC.

4. Relying upon the testimony of the victim (PW-3), which was held to be unimpeachable and stellar, the Assistant Sessions Judge -cum- Chief Judicial Magistrate, Cuddalore, vide his judgment dated 28.01.2012 held Murali guilty of wrongfully restraining the victim and voluntarily causing

hurt with a dangerous weapon. Based upon the medical evidence and recovery of the *Veechu Aruval* from Rajavelu, the trial Court further opined that the second-appellant (Rajavelu) had a clear intention to murder the victim and that if not for the victim defending himself, a fatal injury would have been caused to his neck and he would have died instantaneously. Consequently, a concurrent sentence of three months' rigorous imprisonment under Section 324 IPC and one-month rigorous imprisonment under Section 341 IPC was imposed on Murali, and Rajavelu was awarded five years' rigorous imprisonment under Section 307 IPC and another one month rigorous imprisonment under Section 341 IPC. Muthu, Kumar and Krishnan were acquitted as there was no specific allegation by the victim and no weapon or injury had been attributed to them by the prosecution.

5. The convict-appellants challenged the afore-stated judgment before two forums, both of which unanimously upheld their conviction. The Additional District-cum-Sessions Judge dismissed the first appeal through an order dated 20.08.2013 and their criminal revision petition before the High Court also met with the same fate vide an order dated 01.11.2018.

6. Unsatisfied still, the appellants have approached this Court seeking special leave to appeal against the High Court's dismissal of their conviction. However, through an application filed on 22.11.2019, they have sought to implead the injured-victim and get their offences compounded

based on mutual resolution and peaceful settlement between the parties. This Court, nevertheless, issued limited notice only on the quantum of sentence.

7. The records of the case elicit that the findings of all three preceding forums are concurrent and without fault. Not only have the appellants been unable to mount an effective challenge founded upon a question of law, their learned Counsels, given the subsequent events and change in circumstances, have very fairly restricted their prayer qua reduction of sentence only.

8. A perusal of the applications for impleadment and compounding makes it clear that the parties have on the advice of their elders entered into an amicable settlement. The appellants have admitted their fault, taken responsibility for their actions, and have maturely sought forgiveness from the victim. In turn, the victim has benevolently acknowledged the apology, and considering the young age of the appellants at the time of the incident, has forgiven the appellants and settled the dispute. Learned Counsel for the victim-applicant has reiterated the same stance during oral hearings also.

9. There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Section 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound

the appellants' offences.

10. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence. In somewhat similar circumstances where the parties decided to forget their past and live amicably, this Court in ***Ram Pujan v. State of UP [(1973) 2 SCC 456],*** held as follows:

> *"6. The only question with which we are concerned, as mentioned earlier, is about the sentence. In this respect we find that an application for compromise on behalf of the injured prosecution witnesses and the appellants was filed before the High Court. It was stated in the application that the appellants and the injured persons, who belong to one family, had amicably settled their dispute and wanted to live in peace. The High Court thereupon referred the matter to the trial court for verification of the compromise. After the compromise was got verified, the High Court passed an order stating that as the offence under Section 326 of the Penal Code, 1860 was non-compoundable, permission to compound the offence could not be granted. The High Court all the same reduced the sentence for the offence under Section 326 read with Section 34 of the Penal Code, 1860 from four years to two years.*
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> *7. The appellants during the pendency of the appeal were not released on bail and are stated to have already undergone a sentence of rigorous imprisonment for a period of more than four months. As the parties who belong to one family have settled their dispute, it is, in our opinion, not necessary to keep the appellants in jail for a longer period.* ***The major offence for which the appellants have been convicted is no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our***

opinion, meet the ends of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone *provided each of the appellants pays a fine of Rs 1500 in addition to the period of imprisonment already undergone for the offence under Section 326 read with Section 34 of the of the Penal Code, 1860. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under Section 326 read with Section 34 of the of the Penal Code, 1860. Out of the fine, if realised, Rs 2000 should be paid to Ram Sewak and Rs 2000 to Ram Samujh as compensation. We order accordingly."*

(emphasis supplied)

11. The afore-cited view has been consistently followed by this Court including in ***Ishwar Singh v. State of MP [(2008) 15 SCC 667],*** laying down that:

"13. In Jetha Ram v. State of Rajasthan [(2006) 9 SCC 255 : (2006) 2 SCC (Cri) 561] , Murugesan v. Ganapathy Velar [(2001) 10 SCC 504 : 2003 SCC (Cri) 1032] and Ishwarlal v. State of M.P. [(2008) 15 SCC 671 : JT (1988) 3 SC 36 (1)] 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 [1990 Supp SCC 681 : 1991 SCC (Cri) 159 : AIR 1988 SC 2111] 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.

15. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused 1) is reduced to the period already undergone."

(emphasis supplied)

12. In later decisions including in ***Ram Lal v. State of J&K, [(1999) 2 SCC 213]***, ***Bankat v. State of Maharashtra, [(2005) 1 SCC 343]***, ***Mohar Singh v. State of Rajasthan [(2015) 11 SCC 226], Nanda Gopalan v. State of Kerala [(2015) 11 SCC 137]***, ***Shankar v. State of Maharashtra, [(2019) 5 SCC 166],*** this Court has taken note of the compromise between parties to reduce the sentence of the convicts even in serious non-compoundable offences.

13. Given this position of law and the peculiar circumstances arising out of subsequent events, we are of the considered opinion that it is a fit case to take a sympathetic view and reconsider the quantum of sentences awarded to the appellants. We say so because: *first*, the parties to the dispute have

mutually buried their hatchet. The separate affidavit of the victim inspires confidence that the apology has voluntarily been accepted given the efflux of time and owing to the maturity brought about by age. There is no question of the settlement being as a result of any coercion or inducement. Considering that the parties are on friendly terms now and they inhabit the same society, this is a fit case for reduction of sentence.

14. *Second,* at the time of the incident, the victim was a college student, and both appellants too were no older than 20-22 years. The attack was in pursuance of a verbal altercation during a sports match, with there being no previous enmity between the parties. It does raise hope that parties would have grown up and have mended their ways. Indeed, in the present case, fifteen years have elapsed since the incident. The appellants are today in their mid-thirties and present little chance of committing the same crime.

15. *Third,* the appellants have no other criminal antecedents, no previous enmity, and today are married and have children. They are the sole bread earners of their family and have significant social obligations to tend to. In such circumstances, it might not serve the interests of society to keep them incarcerated any further.

16. *Finally,* both appellants have served a significant portion of their sentences. Murali has undergone more than half of his sentence and Rajavelu has been in jail for more than one year and eight months.

17. Considering all these unique factors, including the compromise between the parties, we deem it appropriate to reduce the quantum of the sentence imposed on the appellants. The appeals are, therefore, partly allowed and sentence of both the appellants is reduced to the period already undergone by them. Consequently, they are set free and their bail bonds, if any, are discharged. Any pending applications are disposed of accordingly.

..... J.
(N.V. RAMANA)

..... J.
(SURYA KANT)

..... J.
(ANIRUDDHA BOSE)

NEW DELHI
DATED : 05-01-2021