

(2016) 03 GUJ CK 0067
In the Gujarat High Court

Case No : Criminal Appeal Nos. 343, 80 and 344 of 2011

State of Gujarat

APPELLANT

Vs

Thakor Ranchhodji Sendhaji

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 377
Penal Code, 1860 (IPC) — Section 114, Section 307, Section 325, Section 326, Section 504, Section 506(2)

Citation : (2016) 03 GUJ CK 0067

Hon'ble Judges : M.R. Shah and Mohinder Pal, JJ.

Bench : Division Bench

Advocate : K.P. Raval, APP, for the Appellant; Yogendra Thakore, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.—1. As all these appeals arise out of the impugned judgment and order passed by the learned Trial Court, one preferred by the original accused No. 1 being Criminal Appeal No. 80 of 2011 challenging his conviction for the offence under Section 326 of the IPC, another preferred by the State being Criminal Appeal No. 343 of 2011 for enhancement of the sentence imposed by the learned Trial Court, imposed while convicting the original accused for the offence under Section 326 of the IPC and another appeal being Criminal Appeal No. 344 of 2011 preferred by the State challenging the impugned judgment and order of acquittal passed by the learned Trial Court acquitting the original accused for the offences under Sections 307, 504, 506(2) read with Section 114 of the IPC, all these appeals are decided and disposed of together by this common judgment and order.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Sessions Judge, Patan (herein after referred as "the learned Trial Court") passed in Sessions Case No. 25 of 2009 by which the

learned Trial Court has convicted the original accused No. 1 for the offence under Section 326 of the IPC, original accused No. 1, Thakor Ranchhodji Sedhaji has preferred Criminal Appeal No. 80 of 2011.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Trial Court insofar as imposing the sentence of 2 1/2 years R.I. with fine of Rs. 5000/- for the offence under Section 326 of the IPC, the State has preferred the Criminal Appeal No. 343 of 2011 under Section 377 of the Criminal Procedure Code for enhancement of the sentence.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Trial Court by which the learned Trial Court has acquitted the original accused Nos. 1 and 2 for the offence under Sections 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of Bombay Police Act, the State has preferred the Criminal Appeal No. 344 of 2011.

5. The prosecution case in nutshell is as under:

"5.1 According to complainant, it is the case of the prosecution that elder son of the complainant namely Bharatbhai was serving in Doodh Utpadak Dairy as a Testor and accordingly, he was attending dairy every day in morning as well as in evening. According to prosecution case on 20.11.2008 at about 6.00 hours in the evening, son of complainant Bharatbhai was present in the dairy and at that time at about 6.15 hours complainant Dhanrajbhai has also come on dairy for giving milk. At the relevant point of time, accused No. 1 Thakor Ranchhodji Sedhaji raised dispute with son of complainant Bharatbhai by saying that my milk was 2 liters and 300 gms. in spite of that you were treating the same as 2 liters and 100 gms. by illegal manner. Therefore, in reply to dispute raised by accused No. 1, said Bharatbhai has relied that measurement of milk was being done by computer and therefore, I was helpless, the accused No. 1 got excited, taken out knife from his belt and inflicted two blows on abdomen part/chest of Bharatbhai. Therefore, complainant intervened and save his son Bharatbhai from further beating, the accused No. 1 Ranchhodji ran away with knife. It is further the case of prosecution that while leaving the place of incident, accused No. 1 Ranchhodji has also administered threat to cause death of son of complainant. It is further the case of prosecution that as injuries caused to Bharatbhai was severe in nature, emergency van 108 was called and Bharatbhai was taken in Ashirvad Hospital of Dr. Vipin K. Soni at Patan. Therefore, complainant Dhanrajbhai gave aforesaid complaint before PSO, Patan City Police Station, which was recorded at Station Diary Entry No. 26/2008 and thereafter, transferred the same to Sami Police Station as incident was taken place within the jurisdiction of Sami Police Station. The offence committed by respondents was registered at CR No. I-120/2008 for the alleged offences under Sections 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of the Bombay Police Act and further investigation was handed over to PSI, Shri N.K. Kumpavat."

6. That the Investigating Officer recorded the statement of the concerned

witnesses including the injured eyewitness and other witnesses. He also gathered the documentary evidences including the medical evidences. That after conclusion of investigation, Investigating Officer filed the charge-sheet against both the accused for the offence under Sections 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of the Bombay Police Act, in the Court of learned JMFC, Sami. As the case was exclusively triable by the learned Court of Sessions, learned JMFC committed the case to the Sessions Court, which was numbered as Sessions Case No. 25 of 2009. That the learned Trial Court framed the charge against both the accused for the offence under Sections 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of the Bombay Police Act. Both the accused pleaded not guilty and therefore, both of them came to be tried by the learned Trial Court for the aforesaid offences.

7. To prove the case against the accused, prosecution examined the following witnesses:

8. Through the aforesaid witnesses, the prosecution has also brought on record following documentary evidences.

9. After the closing pursis submitted by the prosecution at Exh. 44, further statement of both the accused came to be recorded under Section 313 of Criminal Procedure Code, both of them stated that they are falsely implicated in the case. However, they did not examine any defence witness nor produce any documentary evidences.

10. At the conclusion of the trial by impugned judgment and order the learned Trial Court has held the original accused No. 1 guilty for the offence under Section 326 of the IPC having caused the injury on the injured eyewitness, Bharatbhai Dhanrajbhai Chaudhari and has sentenced him to undergo 2 1/2 years R.I. with fine of Rs. 5000/-. The learned Trial Court has also passed an order that out of fine of Rs. 5,000/-, Rs. 4,000/- to be paid to injured eye-witness towards compensation. That by impugned judgment and order, the learned Trial Court has acquitted the original accused No. 1 for the offence under Section 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of the Bombay Police Act. That by impugned judgment and order, the learned Trial Court has also acquitted the original accused No. 2 for all the offences for which he was tried.

11. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Trial Court, the State as well as original accused No. 1 have preferred the present Criminal Appeals as noted herein above.

12. Shri Devang Joshi, learned advocate has appeared on behalf of the original accused No. 1 in Criminal Appeal No. 80 of 2011, Shri Y.M. Thakor, learned advocate has appeared on behalf of original accused No. 1 in Criminal Appeal No. 343 of 2011 and Shri K.P. Raval, learned APP has appeared on behalf of the State in all the appeals.

13. Shri Devang Joshi, learned advocate appearing for the original accused No. 1 has vehemently submitted that in the facts and circumstances of the case, the learned Trial Court has materially erred in convicting the original accused No. 1 for the offence under Section 326 of the IPC.

14. It is vehemently submitted by Shri Joshi, learned advocate appearing for original accused No. 1 that as such, the learned Trial Court has not properly appreciated and/or considered the defence of the original accused No. 1 more particularly, defence and/or the case on behalf of the accused that the injured eye-witness Shri Bharatbhai sustained the injury by broken glass which was sustained by him in connection with another incident of molesting a girl and that girl gave the push to the injured eyewitness and the injured eye-witness Bharatbhai fell down and he sustained the injury.

15. In the alternative, it is submitted that even the case would not fall under Section 326 of the IPC as, as such, the incident had occurred due to grave and sudden provocation and there was no intention to cause the death of the injured eye-witness. It is submitted that, therefore, as such, even the case may fall under Section 325 of the IPC. It is submitted that aforesaid statement is made without prejudice to the rights and contentions of the original accused No. 1 that he has not committed any offence and the learned Trial Court ought to have acquitted the original accused No. 1.

16. The conviction appeal is vehemently opposed by Shri K.P. Raval, learned APP appearing on behalf of the State.

17. It is submitted that as such, the learned Trial Court has committed a grave error in convicting the original accused No. 1 for the offence under Section 326 of the IPC only.

18. It is submitted that in any case the finding recorded by the learned Trial Court while convicting the original accused No. 1 are on appreciation of evidence on record and more particularly, considering the deposition of the injured eye-witness, Bharatbhai Dhanrajbhai Chaudhari, PW-2, who has been examined at Exh. 14 and the deposition of Dr. Vipin Kantialal Soni, PW-8 who has been examined at Exh. 22 and deposition of Dr. Amit Agrawal, PW-10 who has been examined at Exh. 25. It is submitted that the injured eye-witness, Bharatbhai Dhanrajbhai Chaudhari, has specifically stated in his deposition that the original accused No. 1 gave the knife blow in the abdomen just below the nipple. It is submitted that as such, he has been fully and thoroughly cross examined by the defence, however, defence has not been able to bring anything contrary to the case of the prosecution. It is further submitted that both the Doctors who treated the injured eye-witness, Bharatbhai Dhanrajbhai Chaudhari, have categorically stated that injury sustained by the injured eye-witness which is possible by sharp edged weapon like knife which was recovered. It is submitted that both the Doctors have stated that injuries received by the injured eye-witness were

serious and it could have caused the death.

19. It is submitted that considering the fact that the injuries were such serious and even the injured eyewitness was unconscious for couple of days and in fact was required to remain in hospital as an indoor patient for more than 1 1/2 months and the depth of the injury as such, no error has been committed by the learned Trial Court convicting the original accused No. 1 for the offence under Section 326 of the IPC.

20. Shri Raval, learned APP has submitted that aforesaid is without prejudice to the rights and contentions of the State that as such, the learned Trial Court ought to have convicted the original accused No. 1 for the offence under Section 307 of the IPC.

21. Making the above submissions, it is requested to dismiss the appeal preferred by the original accused No. 1.

Criminal Appeal No. 343 of 2011

22. Now, so far as Criminal Appeal No. 343 of 2011 preferred by the State for enhancement of the sentence imposed by the learned Trial Court, imposed while convicting the original accused under Section 326 of the IPC is concerned, Shri Raval, learned APP appearing for the State has vehemently submitted that in the facts and circumstances of the case, the sentence imposed by the learned Trial Court cannot be said to be just, adequate punishment commensurate with the gravity of the offence.

23. It is vehemently submitted by Shri Raval, learned APP appearing on behalf of the State that while imposing the sentence, the learned Trial Court has not properly appreciated the fact that the injured eye-witness sustained serious injuries and even knife blow given by original accused No. 1 was such deep that it touched the pancreas and he sustained the serious injuries and he was required to be hospitalized as an indoor patient for more than 1 1/2 months. It is submitted that as per the deposition of Doctors who treated the injured eye-witness, Bharatbhai Dhanrajbhai Chaudhari, the injuries were serious and it could have caused the death. It is submitted that therefore, the learned Trial Court ought to have imposed the maximum punishment provided under Section 326 of the IPC.

24. Making above submissions and relying upon the following decisions, it is requested to allow the Criminal Appeal preferred by the State for enhancement of sentence and impose the maximum punishment provided under Section 326 of IPC.

25. Appeal preferred by the State for enhancement of the sentence being Criminal Appeal No. 343 of 2011 is vehemently opposed by Shri Y.M. Thakor, learned advocate appearing on behalf of the original accused No. 1.

26. It is submitted that in the facts and circumstances of the case, the learned

Trial Court as such, has not committed any error in imposing the sentence of 2 1/2 years R.I.

27. It is submitted that as such, cogent reasons have been given by the learned Trial Court while imposing the sentence of 2 1/2 years for the offence under Section 326 of the IPC.

28. It is vehemently submitted by Shri Thakore, learned advocate appearing for the original accused No. 1 that as such, it cannot be said that injured eye-witness remained unconscious for number of days.

29. It is submitted that when there is no minimum sentence provided for the offence under Section 326 of the IPC and the maximum punishment for the offence under Section 326 of the IPC can be up to life imprisonment and considering the aforesaid facts and circumstance of the case and having so noted, when the learned Trial Court has imposed the sentence of 2 1/2 years, the same is not required to be interfered by this Court in exercise of the appellate jurisdiction.

30. Making above submissions, it is requested to dismiss the present Criminal Appeal No. 348 of 2011 preferred by the State.

Criminal Appeal No. 344 of 2011

31. Shri K.P. Raval, learned APP appearing on behalf of State has vehemently submitted that in the facts and circumstances of the case, the learned Trial Court has materially erred in acquitting the original accused Nos. 1 and 2 for the offence under Sections 307, 504, 506(2) read with Section 114 of the IPC and Section 135 of the Bombay Police Act.

32. It is vehemently submitted by Shri Raval, learned APP appearing on behalf of the State that the manner in which the original accused No. 1 committed the offence and inflicted the knife blow on the abdomen/chest just below the nipple and considering the deposition of the Doctors who treated the injured eye-witness, the injuries were serious and it could have caused the death, the learned Trial Court ought to have convicted the original accused for the offence under Section 307 of the IPC.

33. It is vehemently submitted by Shri Raval, learned APP appearing on behalf of the State that even the learned Trial Court has committed a grave error in acquitting the original accused No. 2.

34. It is submitted that it has come on record that as per the deposition of injured eye-witness, the original accused No. 2 caught hold of the injured eye-witness, Bharatbhai and therefore, the learned Trial Court ought to have convicted the original accused No. 2 for the offence under Section 307 read with Section 114 of the IPC.

35. It is further submitted by Shri Raval, learned APP appearing for the State that even the learned Trial Court has materially erred in acquitting the original

accused for the offence under Sections 504, 506(2) read with Section 114 of the IPC.

36. It is submitted that the finding recorded by the learned Trial Court are contrary to the evidence on record and therefore, it is requested to allow the Criminal Appeal No. 344 of 2011 and convict both the accused for the offences for which they were tried.

37. The present Criminal Appeal No. 344 of 2011 is vehemently opposed by Shri Devang Joshi, learned advocate appearing on behalf of the original accused.

38. It is submitted that as the incident occurred on the spur of the moment in grave and sudden provocation and there was no intention to cause the death of the injured eye-witness, the learned Trial Court has rightly not convicted the original accused No. 1 for the offence under Section 307 of the IPC and has rightly convicted the original accused No. 1 for the offence under Section 326 of the IPC.

39. It is submitted that even the prosecution has failed to prove any case against the original accused No. 2. It is submitted that except the injured eye-witness, no independent witness has supported the case of the prosecution against the original accused No. 2.

40. It is submitted that no cogent evidence has been led to prove that the original accused No. 2 caught hold of the injured eye-witness. It is submitted that therefore by giving cogent reasons when the learned Trial Court has acquitted the original accused No. 2, the same is not required to be interfered by this Court in exercise of the appellate jurisdiction.

41. It is further submitted that even the prosecution has failed to prove any case against the original accused by leading cogent evidence for the offence under Sections 504, 506(2) of the IPC. It is submitted that therefore, by impugned judgment and order passed by the learned Trial Court acquitting the original accused for the offence under Sections 504, 506(2) read with Section 114 of the Indian Penal Code, is not required to be interfered by this Court.

42. Making above submissions, it is requested to dismiss the Criminal Appeal No. 344 of 2011.

43. Heard learned advocates appearing for the respective parties at length.

44. We have perused the impugned judgment and order passed by the learned Trial Court. We have re-appreciated the entire evidence on record.

45. At the outset, it is required to be noted that by impugned judgment and order the learned Trial Court has convicted the original accused No. 1 for the offence under Section 326 of the IPC. The original accused No. 1 was, as such, charged for the offence under Sections 307, 504, 506(2) read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act.

46. That on appreciation the evidence more particularly, the deposition of the injured eye-witness, Bharatbhai, PW-2, who has been examined at Exh. 14, the deposition of the original complainant, Dhanrajbhai Hemrajbhai, PW-1, who has been examined at Exh. 13 and the deposition of Doctor, Vipinbhai Kantilal Soni, PW-8 who has been examined at Exh. 22 and the deposition of Dr. Amit Ramnath Agrawal PW-25, who has been examined at Exh. 25 and the medical evidence on record, the learned Trial Court has convicted the original accused No. 1 for the offence under Section 326 of the IPC.

47. In his deposition, the injured eye-witness, Bharatbhai has narrated the entire incident and has stated the manner in which the original accused No. 1 inflicted the knife blow on his abdomen below the nipple. He has also stated that after original accused No. 1 inflicted the knife blow, he fell down and become unconscious. He has also stated that thereafter, he was admitted in the hospital of Dr. Agrawal where he remained as an indoor patient for approximately 2 months. He has also stated in his deposition that he regained the consciousness after 9 to 10 days. He has been fully cross examined by the defence. However, the defence has not been able to prove anything against the case of the prosecution. During the cross, he has fully supported the case of the prosecution. His deposition is fully corroborated by the deposition of Shri Chaudhari Dhanraj-original complainant, PW-1 who has been examined at Exh. 13. Thus, the prosecution has been successful in proving the case against the original accused No. 1 and the fact that the original accused No. 1 inflicted the knife blow on the injured eye-witness, Bharatbhai.

48. Now that takes us to the question, whether the learned Trial Court has rightly convicted the original accused for the offence under Section 326 of the IPC or not?

49. From the deposition of Dr. Vipin Kantilal Soni, PW-8, who has been examined at Exh. 22 and the deposition of Dr. Amit Ramnath Agrawal, PW-10 who has been examined at Exh. 25 and considering the medical certificates produced at Exh. 23 and 27, the injured eye-witness sustained the serious stab injury on the abdomen and just below the nipple and the injury was 5x3 cm elliptical sharp cut edged wound over left lower ribs at nipple line. From the deposition of Dr. Agrawal, the wound was deep by sharp edged weapon and after cutting stomach it reached and it touched the vein of pancreas.

50. According to said Doctors, the injuries were serious and it could have caused the death. It is also required to be noted that even the injured eye-witness was also required to be hospitalized as an indoor patient for more than 1 1/2 months.

51. Considering the aforesaid facts and circumstances of the case and the evidence on record, the learned Trial Court has rightly convicted the original accused No. 1 for the offence under Section 326 of the IPC. The submission on behalf of the original accused No. 1 that the case may fall under Section 325 of the IPC, in the facts and circumstances of the case and the evidence on record,

cannot be accepted.

52. Under the circumstances, the impugned judgment and order passed by the learned Trial Court convicting the original accused No. 1 for the offence under Section 326 of the IPC is hereby confirmed.

53. Now that takes us to the question, whether in the facts and circumstances of the case the learned Trial Court is justified in imposing the sentence of 2 1/2 years R.I. with fine of Rs. 5000/- for the offence under Section 326 of the IPC? and, Whether in the facts and circumstances of the case, can it be said that the sentence imposed by the learned Trial Court is just, adequate and commensurate with the gravity of the offence?

54. From the evidence on record narrated herein above, the injured eye-witness sustained serious injuries by knife caused by the original accused No. 1. The wound was 5x3 cm and was so deep that it can cut across the stomach and touched the vein just near the pancreas. He was required to be given the treatment by laprotomy and thereafter, bleeding from the pancreas was stopped by operation. In his chest, even the I.C.B. was required to be put. As per the deposition of the Doctors and the medical evidence on record, the injuries were serious and it could have caused the death.

55. Now so far as the defence on behalf of the original accused No. 1 that the injured eye-witness sustained the injury by broken glass is concerned, from the evidence of the medical, the same is not sustained. Even no defence evidence is led on behalf of the original accused No. 1. As observed herein above, even the girl who is alleged to have pushed to the injured eye-witness has also not been examined. Even Doctors in their depositions have categorically stated that injuries sustained by the injured eye-witness were possible by sharp cutting weapon like knife. Under the circumstances, the case of the defence that the injured eye-witness sustained the injury by broken glass cannot be accepted. Even considering the injuries sustained, such an injury by broken glass is not possible.

56. Under the circumstances, imposing the sentence only 2 1/2 years R.I. with fine of Rs. 5000/- and no default sentence, cannot be sustained. The sentence imposed by the learned Trial Court cannot be said to be just, adequate punishment commensurate with the gravity of the offence. At this stage, two decisions of the Hon"ble Supreme Court on sufficient adequate punishment are required to be referred to. (I) In the case of Abdul Waheed V/s. State of Uttar Pradesh reported in , (2016) 1 SCC 583 and another decision of Hon"ble Supreme Court in the case of Raj Bala V/s. State of Haryana and Others reported in , (2016) 1 SCC 463: while discussing the principles for sentencing and the duty of the Court while imposing the sentence, in paragraph Nos. 1 to 4 and paragraph No. 16, the Hon"ble the Supreme Court has observed and held as under:

"1. In Gopal Singh v. State of Uttarakhand, while focusing on the gravity of the

crime and the concept of proportionality as regards the punishment, the Court had observed:--

"Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect -- propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

(Emphasis added)

2. Seven years prior to that, in *Shailesh Jasvantbhai v. State of Gujarat*, it has been held that:--

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his *Law in Changing Society*

stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.*

(Emphasis supplied)

And again:--

"The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society"s cry for justice against the criminal".

3. It needs no special emphasis to state that prior to the said decision, there are series of judgments of this Court emphasizing on appropriate sentencing. Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft-quoted saying of Justice Benjamin N. Cardozo "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.

4. We have commenced the judgment with the aforesaid pronouncements, and our anguished observations, for the present case, in essentiality, depicts an exercise of judicial discretion to be completely moving away from the objective parameters of law which clearly postulate that the prime objective of criminal law is the imposition of adequate, just and proportionate punishment which is commensurate with the gravity, nature of the crime and manner in which the

offence is committed keeping in mind the social interest and the conscience of the society, as has been laid down in *State of M.P. v. Babu Lal*, *State of M.P. v. Surendra Singh* and *State of Punjab v. Bawa Singh*

16. A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective".

57. Applying the law laid down by the Hon"ble Supreme Court in the facts of the case in hand, we are of the opinion that while maintaining the conviction of the original accused No. 1 for the offence under Section 326 of the IPC, the original accused No. 1 is sentenced to undergo 5 years R.I. with fine imposed by the learned Trial Court maintained and in default to undergo further 6 months R.I., the same can be said to be just, adequate punishment commensurate with the gravity of the offence.

58. Under the circumstances, the impugned judgment and order passed by the learned Trial Court insofar as imposing the sentence is concerned, is required to be interfered by this Court. Consequently, Criminal Appeal No. 343 of 2011 is required to be partly allowed to the aforesaid extent.

59. Now so far as the Criminal Appeal No. 344 of 2011 preferred by the State challenging the impugned judgment and order passed by the learned Trial Court acquitting the original accused for the offence under Sections, 307, 504, 506(2) read with Section 114 of the IPC is concerned, at the outset, it is required to be noted that as such, by giving cogent reasons on appreciation of evidence, the learned Trial Court has acquitted the original accused No. 2 which in our view, the same is on appreciation of evidence and therefore, the same is not required to be interfered by this Court in exercise of the appellate jurisdiction.

60. It is required to be noted that though the injured eye-witness and the original complainant stated that at the time when the original accused No. 1 inflicted the knife blow on the injured eye-witness, Bharatbhai, original accused No. 2 caught hold of the injured eyewitness. However, it is required to be noted that at the time when the original complainant gave a complaint/FIR, the name of the original accused No. 2 was not disclosed. Subsequently and in the further statement, the allegations were made against the original accused No. 2. Considering the aforesaid facts and circumstances of the case, when the original accused No. 2 has been acquitted, the same is not required to be interfered by this Court. The impugned judgment and order passed by the learned Trial Court acquitting the original accused No. 2 is hereby confirmed.

61. Now, so far as the impugned judgment and order passed by the learned Trial Court acquitting the original accused No. 1 for the offence under Section 307 of the IPC and convicting the original accused No. 1 for the offence under Section 326 of the IPC is concerned, looking to the injuries sustained and the manner in which the incident had taken place, it cannot be said that there was any intention of the original accused No. 1 to cause the death of the injured eye-witness.

62. Under the circumstances, the learned Trial Court has not committed any error in not convicting the original accused No. 1 for the offence under Section 307 of the IPC. Similarly, the learned Trial Court has also not committed any error in acquitting the original accused for the offence under Section 504, 506(2) of the IPC. By leading the cogent evidence, allegation for the offence under Section 504 and 506(2) of the IPC are not made out. Under the circumstances also, the impugned judgment and order passed by the learned Trial Court acquitting the original accused for the offence under Section 504, 506(2) of IPC is hereby confirmed.

63. In view of the above, Criminal Appeal No. 80 of 2011 preferred by the original accused No. 1 is hereby dismissed. The impugned judgment and order passed by learned Sessions Judge, Patan passed in Sessions Case No. 25 of 2009 on 18.12.2010 convicting the original accused No. 1 for the offence under Section 326 of the Indian Penal Code is hereby confirmed.

Criminal Appeal No. 343 of 2011 preferred by the State for enhancement of the sentence imposed by the learned Trial Court imposed while convicting the original accused for the offence under Section 326 of the IPC is hereby partly allowed and while maintaining/confirming the impugned judgment and order of conviction passed by learned Trial Court convicting the original accused No. 1 for the offence under Section 326 of IPC, the original accused No. 1 is hereby sentenced to undergo 5 years R.I. and fine of Rs. 5,000/- and in default to undergo further 3 months R.I.

It goes without saying that whatever sentence the original accused No. 1 has undergone, the same shall be given set off in accordance with law. It is reported that the original accused No. 1 is on bail during the pendency of the Criminal

Appeal No. 80 of 2011. On his conviction being confirmed by the present order, his bail bond stands cancelled and he shall be taken into custody forthwith for undergoing remaining sentence.

Criminal Appeal No. 344 of 2011 preferred by the State deserves to be dismissed and is accordingly dismissed.

Registry is directed to return the R & Ps to the learned Trial Court forthwith.