RADHEY SHYAM A

v.

STATE OF U.P.

(Criminal Appeal No. 1833 of 2008)

NOVEMBER 18, 2008 B

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

PENAL CODE, 1860:

s. 326 – Father and son were prosecuted u/s 307 IPC C
for pouring acid on their tenant – Trial Court convicting the son and sentencing him to 4 year rigorous imprisonment u/s 326 and acquitting his father – High Court maintaining the conviction and sentence – In appeal before Supreme Court notice issued with regard to sentence only – Plea for D
leniency in sentence – Affidavit sworn by complainant practically absolving the accused – HELD: The incident is 30 years old and after being released in 2006 on bail, it would not be proper to send the accused back to jail, more particularly, when nothing has been stated against him E
regarding his indulgence in any criminal activity – The convict must have acted under the influence of his father who had filed the civil suit and lost – There is nothing on record to suggest that the injuries were very serious and endangered the life of the complainant – In fact, it is only on that ground, F
that the accused persons were charged with offence u/s 326 IPC – Even if the conviction is held to be justified, the circumstances suggest leniency in sentence – Accordingly, while confirming the conviction, sentence is limited to the period already undergone. G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1833 of 2008.

A From the final Judgment and Order dated 8.12.2005 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1909 of 1981.

Kirpal Singh and K.S. Rana for the Appellant.

B S.N. Pandey and Chandra Prakash Pandey for the Respondent.

The following Order of the Court was delivered :

C **ORDER**

1. Leave granted.

2. By the instant appeal, appellant Radhey Shyam, S/o Ganga Prasad, original accused No. 2 challenges his D conviction for offence under Section 326, Indian Penal Code (hereinafter called 'IPC' for short) and the consequent sentence of rigorous imprisonment for 4 years. Initially, the charge against the appellant was under Section 307 read with Section 34 IPC. His father Ganga Prasad, first accused, was tried along with E him. Eventually, the father Ganga Prasad was acquitted, while the appellant was convicted, but the Trial Court converted the offence to that under Section 326 IPC and awarded the sentence. The verdict of the Sessions Court was challenged before the High Court, where the verdict of conviction and F sentence was confirmed. Initially, when the matter came up before this Court, this Court issued a notice, limited to the question of sentence. The accused was also ordered to be released on bail. This notice was issued on 5.6.2006.

G 3. Today, when the matter has come up before us, the Learned Counsel for the appellant prays for the leniency regarding the sentence. It is pointed out that this incident has taken place in the night between 31st October and 1st November, 1978. The allegation against the accused persons H was that the first accused Ganga Prasad owned a house being

House No. 20, Lal Kurti Bazar, P.S. Cantt. in Kanpur City. While the landlord and his family resided on the Ground Floor and the Second Floor of the house, the First Floor was rented out to Badlu Ram, who used to stay there along with his wife and son. The relations between the landlord and the tenant were strained and the landlord Ganga Prasad had also filed a Civil Suit for eviction of Badlu Ram, which Suit was dismissed. The Learned Counsel points out that the prosecution story was that while Badlu Ram and his wife Manki were sleeping on two cots and their son was sleeping on a cot in the Balcony of the house, at about 3 A.M., Badlu Ram felt irritation in the body and he woke up and saw that his landlord Ganga Prasad and his son Radhey Shyam were inside his room and Radhey Shyam was having a bottle in his hand. Badlu Ram immediately raised an alarm. The father and the son ran away from the room towards the staircase. While they ran, they were seen by the prosecution witnesses. The two accused ran to their own house and locked themselves in. It was obvious that Badlu Ram was injured due to the acid being thrown on him, which had caused him irritation. As many as 4 acid burn injuries were found on his body and more particularly, on the neck below left ear, chest, left arm and forearm and on other parts of the body, like left thigh, right side chest and on the back. The accused were arrested and tried. Ganga Prasad, accused No. 1 was given the benefit of doubt, however, the Court found that it was the present appellant, who had poured the acid and committed offence. It was on this basis, that the sentence of 4 years of rigorous imprisonment came to be passed.

4. The Learned Counsel urges that the incident is at least 30 years old and at that time, the accused was a young man of about 23 years. He further points out that since the initial charge was under Section 307 IPC, both the accused were arrested and were behind the bar for substantial time. The Learned Counsel further points out that even after the conviction, the present appellant was taken in custody and has

A remained behind the bars till he was released on bail on the basis of the order passed by this Court on 5.6.2006. He further pointed out that complainant Badlu Ram has filed affidavit dt. 5.5.2006, wherein, he had given a clean chit to the appellant that he could not recognize Radhey Shyam at the time of B incident. Lastly, the Learned Counsel contends that there has been no Police records as against the appellant, nor has he indulged in any crime and that the incident, if at all took place, was because of the enmity causing relatively minor injuries to complainant Badlu Ram. In that view, the Learned Counsel C prays that the Court should show leniency in the matter of sentence, as the appellant has already undergone about 1 year of sentence.

5. As against this, the State Counsel opposes and points D out that the complainant had suffered serious injuries, disfiguring his face and, therefore, this Court should not show any leniency.

6. Since the notice issued by this Court was limited to the sentence alone, we refuse to go to the merits of the conviction, E though the feeble attempt is made by the Learned Counsel to plead innocence on the part of the appellant. However, insofar as the sentence is concerned, we must take into account the affidavit sworn by Badlu Ram, the complainant, practically absolving the appellant. Though it will be of no use at this stage F for pleading the acquittal, it is certain that the relations between the parties have improved.

7. It is also seen that the incident is 30 years old and after being released in 2006 on bail, it will not be proper to send G the accused back to jail, more particularly, because nothing has been stated against him regarding his indulgence in any criminal activity. We are also mindful of the fact that the accused must have acted under the influence of his father, who was in fact, the main actor in the whole drama. It was he, who had filed H the Civil Suit and lost. The appellant, therefore, seems to have

acted under the influence of his father. Lastly, there is nothing on record to suggest that the injuries were very serious and endangered the life of Badlu Ram. In fact, it is only on that ground, that the accused persons have been charged for offence under Section 326 IPC. In short, even if we agree that the conviction was justified for the reasons aforementioned, we lean in favour of the leniency in sentence. Accordingly, we confirm the conviction, however, limiting the sentence to that, which is undergone by the appellant. With these observations, the appeal is dismissed.

R.P. Appeal dismissed.