
(2017) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : 686 of 2007

Lakhvindar Kaur

APPELLANT

Vs

Gurudwara Prabandhak Committee, Premsar & Others

RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 374](#) - Appeals from convictions
[Indian Penal Code, 1860](#), [Section 324](#),
[Section 307](#), [Section 341](#)

Citation : (2017) 12 MP CK 0002

Hon'ble Judges : Rajendra Mahajan, G.S. Ahluwalia

Bench : Single Bench

Advocate : R.K. Sharma, V.K. Agarwal, Prakhar Dhengula

Final Decision : Allowed

Judgement

1. This Criminal Appeal has been filed under Section 374 of Cr.P.C. against the judgment and sentence dated 24-8-2007 passed by IVth A.S.J., Morena, District Morena in Sessions Trial No.44/1994 by which the appellant No. 1 Ramkrishna @ Sanju has been convicted under Sections 341, 307, and 324 of I.P.C. and the appellants No.2, 3 and 4 have been convicted under Sections 341, 323 of I.P.C. Appellant No.1, has been sentenced to undergo rigorous imprisonment of 5 years and a fine of Rs.2000/- with default imprisonment for offence under Section 307 of I.P.C. and rigorous imprisonment of 1 years and a fine of Rs.2000/- for offence under Section 324 of I.P.C. and a fine of Rs.500/- for offence under Section 341 of I.P.C. The appellants No. 2 and 3 have been sentenced to the period already undergone by them and a fine of Rs.1000/- with default imprisonment for offence under Section 323 of I.P.C. and a fine of Rs. 500/- for offence under Section 341 of I.P.C. and the appellant No. 4 has been sentenced to pay fine of Rs. 500/- and Rs. 1000/- for offence under Sections 341 and 323 of I.P.C. respectively.

2. The necessary facts for the disposal of the present appeal in short are that Shriram Sharma, the father of the complainant Rajesh Sharma, appellant Siyaram and Prosecution witness Ramnath Sharma (P.W.9) are real brothers. One Ratiram is a cousin brother and was issueless, therefore, he had given his property to Ramlakhan and appellant Ramkrishna by way of "will" and "sale deed" and accordingly Ramlakhan and appellant Ramkrishna were in possession of the same. The parties were at loggerhead due to this property dispute. One civil suit as well as criminal cases had taken place between the parties.

3. According to the prosecution story, two days prior to 21- 6-1993, the complainant Rajesh had come to his village to look after his fields. His uncle, namely Ramnath Sharma and his son Shrikant Sharma had also come to the village and were staying in the house of Ramswaroop Goswami. On the date of incident, the appellant Siyaram and Ramnath had a talk in the house of Siyaram on the issue of partition. The talks took place in a cordial atmosphere. Thereafter, the complainant went to fetch water from a well. When he reached in front of the house of Siyaram, he was caught hold by the appellant Bhagwati and appellant Ramlakhan gave a lathi blow on his head. The appellants Siyaram and Ramkrishna @ Sanju also started assaulting him by lathis, as a result of which the complainant Rajesh Sharma fell down. On hearing the screams of the complainant, Ramswaroop Bharti (P.W.8), Ramnath Sharma (P.W.9) and Shrikant Sharma (P.W.10) reached on the spot. At that time, the appellant Ramkrishna @ Sanju went to the roof of his house and fired a gun shot, but the said fire did not hit the complainant Rajesh Sharma, but a pellet hit on the forehead of Ramjilal (P.W.5), who was sitting in front of the door of his house. The F.I.R. Ex. P. 11 was lodged. The police after concluding the investigation, filed the charge sheet.

4. The Trial Court framed charges for offence under Sections 341, 307 of I.P.C. against the appellant no.1 and under Sections 341, 323 of I.P.C. against the remaining appellants.

5. The appellants abjured their guilt and pleaded not guilty.

6. The Trial Court after recording evidence and hearing both the parties, convicted appellant No. 1 Ramkrishna @ Sanju under Section 341, 307, and 324 of I.P.C. and the appellants no.2, 3 and 4 under Section 341, 323 of I.P.C.

7. The counsel for the appellants did not challenge the findings of conviction recorded by the Trial Court.

8. It is submitted by the counsel for the appellants that the parties have resolved their disputes and an application for permission to compromise was also filed before this Court which has been verified by the Principal Registrar, of this Court, therefore, the appellants may be acquitted or may be saddled with the jail sentence of period already undergone.

9. Considered the submissions made by the Counsel for the appellants.

10. So far as the offences under Sections 323, 324 and 341 of I.P.C. are

concerned, they are compoundable and thus, the offences can be compounded even at the appellate/revisional stage.

11. This Court by order dated 13-11-2017 had directed the parties to appear before the Principal Registrar, of this Court for verification of factum of compromise.

12. The Principal Registrar of this Court has submitted the following report :

"Statement of Accused/Appellant No.1 Ramkrishna @ Sanju, No.2 Bhagwati, No.3 Ramlakhan & No.4 Siyaram and Complainant/victim No.1 Rajesh Sharma and Ramjilal are recorded. Matter perused, inquired and heard as to factum of compromise. After verifying parties present before me that they have arrived at compromise voluntarily, without any threat, inducement and coercion. According to under Section 320 of Cr.P.C. offences under Section 323, 324 & 341 of I.P.C. are compoundable. But offence under Section 307 of IPC is not compoundable."

13. Thus, the application filed under Section 320(2) of Cr.P.C. is allowed and the appellant no.1 is acquitted of charge under Sections 324, 341 of I.P.C. and the remaining appellants are acquitted of the charge under Sections 323, 341 of I.P.C.

14. The appellant No.1 has also been convicted under Section 307 of I.P.C.

15. The next question for determination is that whether the appellant No. 1 Ram Krishna @ Sanju can be acquitted from the charge under Section 307 of I.P.C. on the basis of compromise at the appellate stage or not?

16. The Supreme Court in the case of Narinder Singh Vs. State of Punjab reported in (2014) 6 SCC 466 has held as under :

"28. We have found that in certain cases, the High Courts have accepted the compromise between the parties when the matter in appeal was pending before the High Court against the conviction recorded by the trial court. Obviously, such cases are those where the accused persons have been found guilty by the trial court, which means the serious charge of Section 307 IPC has been proved beyond reasonable doubt at the level of the trial court. There would not be any question of accepting compromise and acquitting the accused persons simply because the private parties have buried the hatchet.

* * * *

29.7.While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role.

Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/ investigation. It is because of the reason that at this stage the investigation is

still on and even the charge- sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

17. Thus, once a person is convicted, then he cannot be acquitted on the basis of compromise. Accordingly, the prayer of the Counsel for the appellant to acquit the appellant on the basis of compromise cannot be accepted and hence, rejected.

18. It is next contended by the Counsel for the appellant that the factum of compromise can be considered while determining the question of sentence.

19. The Supreme Court in the case of Mukesh Kumar Vs. State of Rajasthan reported in (2013) 11 SCC 511 has held as under :

"8. The Court has not sentenced the appellants to imprisonment for the offence punishable under Section 324 read with Section 34 IPC separately as the sentence awarded for the offence punishable under Section 326 read with Section 34 IPC was considered enough. The fact, however, remains that the appellants stand convicted for a non-compoundable offence. The settlement/ compromise and the prayer for composition based on the same, therefore, remains inconsequential in the light of the judgment of this Court in Ram Lal v. State of J & k [(1999) 2 SCC 213] where this Court has held that an offence can be compounded only if it is compoundable no matter the court may (sic) take into consideration the settlement between the parties while awarding sentence to the appellants. The following passage is apposite in this regard:

(SCC p. 214, paras 3-5)

"3. ... 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, 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.

Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:

"320. (9) No offence shall be compounded except as provided by this section."

4. It is apparent that when the decision in Mahesh Chand [1990 Supp SCC 681] was rendered, the attention of the learned Judges was not drawn to the aforesaid legal prohibition. Nor was the attention of the learned Judges who rendered the decision in Y. Suresh Babu [(2005) 1 SCC 347] drawn. Hence those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable, even with the permission of the court cannot be compounded at all. The offence under Section 326 IPC is, admittedly, non-compoundable and hence we cannot accede to the request of the learned counsel to permit the same to be compounded.

5. However, considering the fact that the parties have come to a settlement and the victims have no grievance now and considering the further fact that the first appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he has already undergone. We order so and direct the jail authorities to set him at liberty forthwith."

20. The Supreme Court in the case of Rajendra Harakchand Bhandari Vs. State of Maharashtra, reported in (2011) 13 SCC 311 has held as under :

"13. We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned Senior Counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on 17-5-1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two-and-a-half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine."

21. The Supreme Court in the case of Ram Pujan Vs. State of U.P. Reported in (1973) 2 SCC 456 has held as under :

"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 Indian Penal Code. 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 Indian Penal Code. 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".

22. The Supreme Court in the case of Puttaswamy Vs. State of Karnataka reported in (2009) 1 SCC 711 has held as under :

"12. What emerges from all these decisions is that even if an offence is not compoundable within the scope of Section 320 of the Code of Criminal Procedure the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction".

23. The Supreme Court in the case of Gulab Das and others Vs. State of M.P. Reported in AIR 2012 SC 888 has held as under :

"7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307, IPC could be allowed having regard to the compromise arrived at between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Cr.P.C. cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in Ram Lal and Anr. v. State of J and K (1999) 2 SCC 213 : (AIR 1999 SC 895), and Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667 : (AIR 2009 SC 675). We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos. 2 and 3 stand convicted. 8. Having said that we are of the view that the settlement/ compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in

question had taken place in the year 1994. The parties are related to each other. Both Appellant Nos. 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325 / 34 and 323, IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs. 300/- and imprisonment of six months under Section 323, IPC . We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. Moreso, the appellants have already served substantial part of the sentence awarded to them".

24. Thus, it is clear that where the offence is non- compoundable and the parties have come to a compromise, then the factum of compromise can always be considered while determining the question of sentence.

25. If the facts of the present appeal are considered, then it would be clear that according to the prosecution case, the appellant had fired on Rajesh Sharma but the gun shot missed and caused pellet injuries to Ramjilal who was sitting under the tree. The appellant has been convicted under Section 307 of I.P.C. for firing at complainant Rajesh Sharma. The appellant has been convicted for offence under Section 324 of I.P.C. for causing pellet injuries to Ramjilal. The other injuries

found on the body of complainant Rajesh Sharma were simple in nature and appellant Ramlakhan and Siyaram who had caused those injuries, were sentenced with fine and for the period already undergone by him. It is submitted by the Counsel for the appellants that, during trial, the appellant No.1 had remained in jail from 5-11-1993 to 24-12-1993 i.e., for a period of 50 days during trial and he has remained in jail for a period of 55 days after Trial, as he was granted bail by this Court by order dated 17-10-2007. Thus, he has remained in jail for a period of 105 days. The complainant Rajesh Sharma, had also filed a Criminal Revision for enhancement of sentence which was registered as Cr.R. No.862/2007. The complainant has withdrawn the criminal revision in the light of the compromise arrived at between the parties.

26. Considering the totality of facts and circumstances of the case, the genesis of the dispute, as well as the fact that the incident took place in the year 1993 and 24 years have passed, as well as the parties are related to each other, this Court is of the considered opinion that while maintaining the conviction of the appellant no.1 for offence under Section 307 of I.P.C., and by taking into consideration that compromise has taken place between the parties, the ends of justice would be served if the jail sentence of 5 years, awarded to the appellant no.1 for offence under Section 307 of I.P.C., is reduced to the period already undergone by the appellant No.1. Accordingly, maintaining the fine amount, the jail sentence awarded to the appellant no.1 for offence under Section 307 of I.P.C. is modified to the period already undergone.

27. Consequently, the appeal is partly allowed. The appellant No.1 Ramkrishna @ Sanju is acquitted of the charge under Sections 324 and 341 of I.P.C. and the appellants Bhagwati, Ramlakhan and Siyaram are acquitted of the charge under Sections 323, 341 of IPC.

28. The conviction of appellant No.1 for offence under Section 307 of I.P.C. is hereby affirmed and while maintaining the fine amount, he is sentenced to the period undergone by him.

29. Accordingly, the judgment and sentence dated 24-8- 2007 passed by IVth A.S.J., Morena in Sessions Trial No. 44/1994 is modified to the extent mentioned above.

30. The appellant No.1 is on bail. His bail bonds and surety bonds stand discharged. He is no more required in the present case.

31. The appeal is partly allowed to the extent mentioned above.