
(2002) 12 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 216 of 1987

Sarjerao Shamrao Dhas and Others APPELLANT
Vs
State of Maharashtra RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2003) 2 ALD(Cri) 39 : (2003) BomCR(Cri) 1521 : (2003) 2 MhLj 235

Hon'ble Judges : V.K. Tahilramani, J

Bench : Single Bench

Advocate : P.P. Hudlikar and S.D. Thokade, instructed by S.S. Jadhav, for the Appellant; K.K. Kapoor, Assistant Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

V.K. Tahilramani, J.—The appellants who are the original accused Nos. 1 to 5, 7 to 17, 20, 21 and 23 have been mainly convicted under Sections 307 read with 34 of Indian Penal Code by the learned IInd Additional Sessions Judge, Solapur in Sessions Case No. 39/86. In the said case, all the appellants have been convicted under Sections 147 and 148 Indian Penal Code and sentenced to R.I. for 1 year and 2 years respectively on those counts. They have also been convicted u/s 307 read with 149 Indian Penal Code and sentenced to R.I. for 7 years and to pay fine of Rs. 300/- i.d. R. I. for 3 months. They have also been convicted u/s 332 read with 149 Indian Penal Code and sentenced to undergo R.I. for 2 years and u/s 135(1) of the Bombay Police Act.

2. On the last occasion i.e. 2-12-2002 when this matter came up for hearing, all the injured witnesses in the said case i.e. PW 2 Balu Shivdas Dhas, PW 5 Vithal Balbhim Dhas, PW 6 Chandrakant Kerba Dhas, PW 8 Kashinath Shankar Dhas, PW 9 Laxman Limbaraj Dhas and PW 10 Arjun Krishna Dhas were personally present before this court and they showed their desire to settle the matter amicably. It was stated on behalf of the injured witnesses that they have settled the matter amongst themselves and they are residing amicably and peacefully in

the village. I ascertained that they had voluntarily decided to settle the matter. Hence, time was given to them till today to file their affidavits. Accordingly, the necessary affidavits by all of them have been filed and the said affidavits are taken on record and marked "X" (colly.) for identification. The translation of the said affidavits is marked as "X-1 (colly.)".

3. However, it is seen that the appellants/accused have been mainly convicted u/s 307 of Indian Penal Code which is a non-compoundable offence, hence, I cannot acquit the appellants/accused persons on the basis of the said compromise. However, useful reference may be made to the case reported in Criminal Appeal No. 216 of 1987 decided on 10-12-2002. (Bombay) Salim and Ors. v. State of M.P. wherein similar facts arose. In the said case, the appellants were convicted u/s 307 read with 34, Indian Penal Code. The Apex Court had observed thus :--

"We cannot acquit the accused persons on the basis of the compromise. However, as held by this Court in Ram Pujan and Ors. v. State of U.P. the fact that they have compromised the matter and have patched up their differences and the fact that since then they have been living together happily, has relevance so far as the question of sentence is concerned."

The Hon"ble Apex Court after having been satisfied of genuineness of the compromise allowed the appeal and directed that the sentence should be altered to that already undergone.

4. In the present case also, the appellants have been convicted mainly u/s 307 of Indian Penal Code. The facts in the present case and those in the case of Salim (supra) are similar. I am also inclined to pass similar orders with the view that henceforth no untoward incident takes place and that the appellants and injured witnesses will live in peace and harmony in the village.

5. In this view of the matter, appeal of the appellants is partly allowed. The conviction on all counts is confirmed, however the sentences are reduced to that already undergone by them. The bail bonds shall stand cancelled.

Appeal is partly allowed in above terms.