

SUPREME COURT OF INDIA

Ishwar Singh

Vs.

State of M.P.

CrI.A.No.1626 of 2008

(C.K. Thakker and D.K. Jain JJ.)

17.10.2008

JUDGMENT

C.K. Thakker, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order of conviction and sentence recorded by the First Additional Sessions Judge, Ujjain, Madhya Pradesh on December 2, 1994 in Sessions Trial No.258 of 1993 and confirmed by the High Court of Madhya Pradesh (Indore Bench) on September 11, 2007 in Criminal Appeal No.817 of 1994.

3. The case of the prosecution was that on March 3, 1993 between 7.00 and 8.00 a.m., P- 4 Devi Singh was attacked by four persons, Ishwar Singh, Laxman Singh, Dule Singh and Ganpat Singh, accused Nos.1 to 4 respectively. All the accused were, therefore, charged for commission of offences punishable under Section 307 read with Section 34, *Indian Penal Code, 1860 (IPC)*. After usual investigation, the matter was committed to the Court of Session in view of charge under Section 307, IPC which was exclusively triable by a Court of Session.

4. The learned Judge, vide his Judgment and Order dated December 2, 1994, held that the prosecution was successful in partly establishing the case. On the basis of evidence of prosecution witnesses, the trial Court held that it would be appropriate to give benefit of doubt to accused Nos.2 to 4 and accordingly, the trial Court acquitted three accused. Regarding accused No.1 Ishwar Singh (appellant herein), the Court ruled that it was proved 'beyond reasonable doubt' that he had attacked victim Devi Singh and had administered knife blows on the person of the injured. Accordingly, the Court convicted appellant- accused No.1 for an offence punishable under Section 307, IPC.

5. Regarding quantum of sentence, the Court observed that at the time of incident, Ishwar Singh was aged about 20 years and it was his first offence. Considering those factors, the

trial Court ordered him to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo imprisonment for six months more.

6. The order of conviction and sentence was challenged by accused No.1-appellant herein by filing Criminal Appeal No.817 of 1994. The High Court of Madhya Pradesh (Indore Bench) again considered the evidence on record and the findings recorded by the trial Court and held that no error either of fact or of law had been committed by the trial Court and the order of conviction recorded by the High Court was in consonance with law. Regarding sentence also, the High Court held that it could not be said that the sentence awarded on the appellant was excessive or harsh. Accordingly, the appeal was dismissed. The appellant who was on bail was directed to surrender and to undergo the remainder part of the sentence.

7. The said order is challenged in the present appeal. On January 15, 2008, notice was issued by this Court. On August 13, 2008, at the oral prayer of learned counsel for the appellant, injured Devi Singh was ordered to be joined as party respondent No.2 and notice was issued to him by making it returnable within two weeks. The notice was served and the injured appeared through a lawyer.

8. We have heard learned counsel for the parties.

9. The learned counsel for the appellant stated that during the pendency of the proceedings before this Court, mutual compromise has been arrived between the parties, i.e. accused-Ishwar Singh on the one hand and the complainant-victim Devi Singh on the other hand.

10. An affidavit is also filed by the appellant-accused No.1 in this Court. In paragraph 3, it is stated;

"The accused petitioner and the complainant Devi Singh are members of the same community and reside permanently in the same village and are also related to each other. Now the relations between the accused and the complainant and their families are cordial and there is no surviving dispute of any kind between the parties. Father of the accused, Shankarlalji is uncle of the complainant. He is very old and due to old age he needs to be looked after by his son i.e. accused Ishwar Singh. If Ishwar Singh is released from jail in view of the cordial relations between the parties, both the families would be able to live together peacefully without any ill will".

11. It was, therefore, jointly prayed on behalf of the parties that the appellant may be released by treating the sentence already undergone by the appellant-accused as sufficient.

12. An affidavit is also filed by victim Devi Singh wherein he has stated that he is the complainant-injured. It is stated that the contents in the affidavit filed by appellant accused regarding compromise between accused No.1 and the complainant are true. A prayer was made by the learned counsel for the parties to dispose of appeal on the basis of compromise between the parties.

13. Now, it cannot be gainsaid that an offence punishable under Section 307, IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

14. In *Jetha Ram v. State of Rajasthan*¹, *Murugesan & Ors. v. Ganapathy Velar*², and *Ishwarlal v. State of M.P.*³, 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*⁴, such offence was ordered to be compounded.

15. 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.

16. 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 is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No.1) is reduced to the period already undergone.

17. For the foregoing reasons, the appeal deserves to be partly allowed and accordingly allowed by maintaining the conviction recorded by the trial court and confirmed by the Appellate Court but by reducing the sentence already undergone by the appellant. The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine, he will pay such amount within four weeks from today.

18. Ordered accordingly.

¹(2006) 9 SCC 255

²(2001) 10 SCC 504

³JT 1988 (3) SC 366 (1)

⁴AIR 1988 SC 2111