**SUPREME COURT OF INDIA**

Gulab Das & Ors.

Vs.

State of M.P.

Crl.A.No.2126 of 2011

(B.S.Chauhan and T.S.Thakur,JJ.,)

16.11.2011

**JUDGMENT**

SLP.(Crl.)No.474 of 2011

**T.S.Thakur,J.,**

1. Leave granted.

2. This appeal calls in question the correctness of an order passed by the High Court of Madhya Pradesh at Jabalpur whereby Criminal Appeal No.1509 of 2000 filed by the appellants challenging their conviction and the sentences awarded to them by the Additional Sessions Judge, Hoshangabad, in Sessions Trial No.60/1995 has been dismissed.

3. Appellant No.1, Gulab Das and his brother, Veeraji are residents of village Sonasavri, District Hoshangabad in the State of Madhya Pradesh. Both of them have built their respective houses that are adjacent to each other. Three days prior to the incident Gulab Das had put up a partition fence between the two properties. On 30th September, 1994 at about 7.45 a.m. while Veeraji was shifting the partition fence, alleging that it encroached on his property, an exchange of hot words started between Gulab Das and his two sons who are appellant Nos. 2 & 3 on one hand and Veeraji, his wife and sons on the other. A free fight followed in which both the parties received injuries resulting in registration of cross cases by them in Police Station Itarsi, District Hoshangabad. While the case registered against the appellants was for offences punishable under Sections 307, 325, 323 read with Section 34 IPC, that registered against the opposite party was for the alleged commission of offences punishable under Sections 325, 323, 294 read with Section 34 IPC. Separate charge sheets in relation to both the cases were filed by the police before the Jurisdictional Magistrate who committed the cases to the Court of Sessions Judge, Hoshangabad. The case against the appellants was made over to the First Additional Sessions Judge, Hoshangabad, who acquitted the appellants for some of the offences while convicting them for some others with which they were charged. The operative portion of the trial Court's order was in the following words:

> "Therefore, accused persons Rajendra @ Rajjan and Chetan is being held guilty for charges under section 307 IPC for causing deadly injuries with intention to cause death of Veeraji and accused Gopaldas is being held guilty under section 323 IPC for causing voluntary simple injuries on Veeraji and accused persons Chetan is held guilty under Section 323 IPC for causing simple injuries on Phoolabai. Accused Chandrashekhar is being acquitted from charges under sections 307, 307/34, 325/34,323/34, 323/34 IPC. Accused Gulabdas is being acquitted from charges undersections 307, 307/34, 325/34, 323/34, 323/34 IPC and accused Chetan is acquitted from charges under sections 307/34, 325/34, 323/34 IPC."

4. Appellant No.1 Gulab Das, and Appellant No.2, Chetan were resultantly sentenced to undergo imprisonment for a period of one month under Section 323 IPC. Appellant No.2 Chetan was further sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.500/- under Section 307 IPC. In default of payment of fine, he was sentenced to undergo further imprisonment for a period of one month. Appellant No.3 was similarly sentenced to undergo three years' imprisonment and a fine of Rs.500/- under Section 307 IPC and in default of payment of fine to further undergo one month's rigorous imprisonment. The sentences were directed to run concurrently.

5. Aggrieved by their conviction and sentence the appellants appealed to the High Court of Madhya Pradesh at Jabalpur which failed and has been dismissed by the order impugned in this appeal. The appellants have in the present appeal by special leave assailed the said order of dismissal.

6. Ms. June Chaudhari, learned senior counsel for the appellants argued that during the pendency of the case in this Court the parties have entered into an amicable settlement/compromise and filed Criminal Misc. Petition No.20418 of 2011 for permission to compound the offences of which the appellants stand convicted. She drew our attention to the compromise deed filed along with the application and argued that since the parties had buried the hatchet by amicably settling their disputes, this Court could allow the matter to be compounded or in the alternative take a lenient view in regard to the sentence awarded to them. It was further submitted that so far as Appellant No.1 is concerned he has already served the sentence awarded to him under Section 323 IPC.

7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer forf 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 underSection 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 & K*[1]

and *Ishwar Singh v. State of Madhya Pradesh*[2] 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. More so, the appellants have already served substantial part of the sentence awarded to them.

9. In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalise the relationship between them.

10. In the result, while upholding the order of conviction recorded by the Courts below, we reduce the sentence awarded to the appellants to the sentence already undergone by them. The appeal is to that extent allowed and the impugned orders modified. The appellants shall be set free forthwith if not otherwise required in any other case.

Judgment Referred.

[1]*(1999) 2 SCC 0213*
[2]*(2008) 15 SCC 0667*