

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Shambhu Kewat

CrI.A.No.2018 of 2013

(K. S. Radhakrishnanand and A. K. Sikri, JJ.)

28.11.2013

JUDGMENT

K. S. Radhakrishnan, J.

1. Leave granted.

2. Respondents herein were charge-sheeted for the offences punishable under Sections 307, 323, 325, 427 read with Section 34 IPC. They were tried before the Court of Additional Sessions Judge, Fast Track No. 1, Kota, Rajasthan. From the side of the prosecution, PWs 1 to 5 were examined and Exh. P1- P12 were produced. From the side of defence, second accused was examined as DW1. The Sessions Court, after hearing the parties and considering the oral and documentary evidence, found the accused persons guilty of the offence punishable under Section 307 read with Section 34 IPC, but acquitted them of the rest of the charges, vide its order dated 9.7.2009. Later, the accused persons were heard on sentence, and they stated that they are not habitual criminals and are aged 26 and 28 years, respectively. Further, it was pointed out that they are poor labourers married and have children. Further, it was also pointed out that the injuries were caused due to sudden provocation, and were not pre-meditated. After hearing the accused and the prosecution, the trial Court, on sentence, passed the following order:

"Heard both the parties. On the basis of the above arguments, perused the case file. Though no criminal record has been produced by the Prosecution against the accused, nor has any arguments about the habitual criminal, however, from the evidence came on file, this fact has been established that accused Banwari and

Shambhu had been taking the goods on credit from the complainant Abdul Rashid, also on the day of incident, had come to take goods on credit and due to arrears of money, he had refused to give the goods on credit. Then they again came back at the place of incident. Thereafter about 10 minutes both came with iron rod and a strip of iron like sword in a planned manner, and both together made a murderous attack on Abdul Rashid. By causing fatal injury on the head after fracture of piece of bone of head of Abdul Rashid, went inside the brain. The doctor performed the surgery and taken out. Thereafter it cannot be said that the accused has injured in ignorance, suddenly on instigation and cause the said injury to Abdul Rashid and for committing the act by them, they have no intention or purpose for committing such act. Case under Section 307 IPC has been proved against the accused beyond doubt. Therefore in this situation lenient view cannot be adopted against the accused. The Hon'ble Supreme Court has shown this intent in several cases that if the leniency is given to the accused, then the criminal people in the society will be encouraged. The accused had without any reason has injured the complainant sitting in his shop. This has been witnessed by other people of the society sitting in shop. Adopting lenient view with the accused, faith of the other people of the society will go from justice. In such situation, as per the direction given by the Hon'ble Supreme Court, the accused are punished as under:

Order of Sentence:

Therefore accused Shambhu son of Babu Lal and accused Banwari lal son of Babu Lal Kevat, residents of Iqbal Chowk, Sakatpura, Kota are declared acquitted from the charge under Section 427 IPC and both the accused are convicted and are sentenced for 10-10 (Ten-Ten) years rigorous imprisonment and fine of Rs.5000-5000/- (Rupees five thousand only) for the charge under Section 307 read with Section 34 IPC. In the event of committing default in the payment of fine will face additional simple imprisonment of 3-3 months. The period spent in police/judicial custody by the accused will be adjusted in the period of original sentence under the provision of Section 428 Cr.P.C. Warrant of sentence be prepared. Recovered property in the case, iron rod and strip of iron like sword be destroyed after expiry of limitation of appeal as per directions. Copy of the judgment be supplied to the accused free of cost."

3. Aggrieved by the order of conviction and sentence, the accused persons approached the High Court by filing S.B. Criminal Appeal No. 825 of 2009. When the appeal came up for hearing, on 16.11.2011, the complainant, Abdul Rashid who was present in the court, stated that he and the accused persons had entered into a compromise and, based on that compromise, he had received the compensation amount from the accused persons for the injuries caused to him. Consequently, it was pointed out that he did not wish to pursue the appeal. Learned counsel appearing for the complainant submitted before the High Court that since the parties had buried the differences and since offence committed was 'against an individual', rather than 'against the State', no fruitful purpose would be served by keeping the accused persons behind the bars, and hence, it was requested that the case be compounded and the appeal be allowed.

4. We have examined the reasons stated by the High Court for acceding to that request. The High Court examined the scope of Sections 482 and 320 CrPC and expressed the view that there are certain similarities and differences between compounding and quashing a case on the basis of compromise and hence, quashing of a criminal proceeding upon a compromise is well within the discretionary power of the Court. It also opined that while the power under Section 320 CrPC is cribbed, cabined and confined, the power under Section 482 CrPC is vast, unparallel and paramount. On facts the High Court opined that it was a case where the fight between the parties had occurred on the spur and heat of the moment and the assault was more a crime 'against an individual', rather than 'against the society at large'. The High Court held as follows:

"In the present case, the fight occurred at the spur of the moment in the heat of the moment. According to the prosecution, both the sides were verbally fighting when alleged; the appellants struck Abdul Rashid (PW-3). The assault was more a crime against an individual than against the society at large. Admittedly, both the parties have entered into a compromise. They have resolved their differences. Thus, it would be in the interest of justice to allow the appeal."

5. The High Court felt that since the parties had entered into a compromise and resolved their disputes and differences, it would be in the interest of justice to allow the appeal. Consequently, the appeal was allowed and the accused persons were acquitted of the offence under Sections 307 read with 34 IPC. Aggrieved by the same, this appeal has been preferred.

6. Learned counsel appearing for the State submitted that the High Court has completely misread and misunderstood the various principles laid down by this Court in *Gian Singh vs. State of Punjab and another*¹, regarding the scope and ambit of Sections 482 and 320 CrPC as well as the powers conferred on the criminal Court to quash criminal proceedings involved in a non-compoundable offence, in view of the compromise arrived at between the parties. The various guidelines laid down by this Court were also overlooked. Learned counsel also submitted that the High Court has also committed an error in holding that the offence which has been proved was merely an offence against an individual, rather than against the State. Learned counsel submitted that the Sessions Court had correctly noticed the nature of injuries and rightly came to the conclusion that the accused had committed injuries not due to sudden provocation, but it was a premeditated incident and that the trial Court has rightly awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC.

7. Learned counsel appearing for the respondents, on the other hand, contended that the parties had entered into a compromise and, on the basis of the compromise, the accused persons paid a substantial amount to the complainant for the injuries caused to him and taking note of the fact that the alleged crime was committed on the spur of the moment

without pre-meditation, the High Court was justified in compounding the offence and acquitting the accused persons.

8. We may point out that in *Gian Singh (supra)*, this Court has held that quashing of offence or criminal proceedings on the ground of settlement between an offender and the victim is not the same thing as compounding of offences. This Court also held that the power of compounding of offences conferred on a Court under Section 320 CrPC is materially different from the power conferred under Section 482 for quashing of criminal proceedings by the High Court. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC and the Court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing a criminal proceeding or criminal complaint under Section 482 CrPC is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

9. The Court also opined that the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 CrPC. This Court further opined that the inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power, namely, (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. This Court also cautioned that while exercising the power of compounding the offence, the court must have due regard to the nature and gravity of the crime.

10. We notice, in this case, admittedly, the offence committed under Section 307 IPC is not compoundable. In

Ishwar Singh vs. State of M. ², the accused was alleged to have committed an offence punishable under Section 307 IPC and, with reference to Section 320 CrPC, it was held that Section 307 was not a compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In *Gulab Das and others vs. State of Madhya Pradesh* ³, a different note was struck by this Court, but certain reasons for compounding the offence under Section 307 IPC were stated. In that case, this Court noticed that the incident had taken place in the year 1994 and the parties were related to each other. Both the accused persons, at the time of the incident, were in their 20's. Further, it was also noticed that a cross case was registered against the complainant also in which he was convicted and sentenced. Further, it was also noticed that the accused persons had also undergone certain period of sentence. The case which was settled between the parties, involved offences punishable under Section 325 read with Section 34 and also under Section 323 IPC. It was in such circumstances that the Court felt that the settlement arrived at between the parties was a sensible one so as to give quietus to the controversy. The Court while upholding the conviction reduced the sentence awarded to the accused to the period they had already undergone.

11. In *Rajendra Harakchand Bhandari and others vs. State of Maharashtra and another*⁴, this Court had an occasion to consider the question whether an offence under Section 307 IPC could be compounded in terms of the compromise reached at between the parties. It was categorically held that the offence under Section 307 IPC is not compoundable in terms of Section 320(9) CrPC and that compounding of such an offence was out of question. Further, taking note of the fact that the incident had occurred in the year 1991 and it was almost 20 years since then, and that the accused persons were agriculturists by occupation and had no previous criminal background and there had been reconciliation among the parties, the Court held that the ends of justice would be met if the substantive sentence awarded to the accused be reduced to the period already undergone.

12. We find, in this case, such a situation does not arise. In the instant case, the incident had occurred on 30.10.2008. The trial Court held that the accused persons, with common intention, went to the shop of the injured Abdul Rashid on that day armed with iron rod and a strip of iron and, in furtherance of their common intention, had caused serious injuries on the body of Abdul Rashid, of which injury number 4 was on his head, which was of a serious nature.

13. Dr. Rakesh Sharma, PW5, had stated that out of the injuries caused to Abdul Rashid, injury no. 4 was an injury on the head and that injury was "grievous and fatal for life". PW8, Dr. Uday Bhomik, also opined that a grievous injury was caused on the head of Abdul Rashid. Dr. Uday conducted the operation on injuries of Abdul Rashid as a Neuro Surgeon and fully supported the opinion expressed by PW 5 Dr. Rakesh Sharma that injury no. 4 was "grievous and fatal for life".

14. We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous imprisonment for the offence punishable under Section 307 IPC, but not by the High Court. The High Court has completely overlooked the various principles laid down by this Court in *Gian Singh* (supra), and has committed a mistake in taking the view that, the injuries were caused on the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in *Gian Singh* (supra) that the Court, while exercising the power under Section 482, must have "due regard to the nature and gravity of the crime" and "the societal impact". Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against "an individual", rather than against "the society at large".

15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual; on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why

Section 307 IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

16. We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the settlement and has not examined the matter on merits, hence, we are inclined to direct the High Court to take back the appeal to its file and decide the appeal on merits. Let the High Court dispose of the appeal within six months. Ordered accordingly.

Judgment referred

¹2012 (10) SCC

²2008 (15) SCC 0667

³2011 (10) SCC 0765

⁴2011 (13) SCC 0311