

SUPREME COURT OF INDIA

Dasan

Vs.

State of Kerala

Crl.A.No.242 of 2014

(Ranjana Prakash Desai and Madan B. Lokur JJ.)

27.01.2014

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. In this appeal, judgment and order dated 17/1/2012 passed by the Kerala High Court confirming the appellant's conviction under Section 326 of the Penal Code is under challenge. We have granted application for impleadment of Uddesh who was examined as PW-2 as he had suffered grievous injury at the hands of the appellant. He is, therefore, party to the present appeal.

3. The appellant is original Accused 1. He was tried along with seven others by the Judicial Magistrate, First Class, Thrissur in Criminal Complaint No.23 of 1997 for offences punishable under Sections 143, 147, 148, 323, 324, 326 read with Section 149 of the Penal Code. Learned Magistrate convicted the appellant for offence punishable under Section 326 of the Penal Code for having caused grievous hurt by dangerous weapon to PW- 2 Uddesh and sentenced him to undergo rigorous imprisonment for three years. The appellant was also ordered to pay Rs.25,000/- as compensation to PW-2 Uddesh. In default of payment of compensation, the appellant was to undergo simple imprisonment for six months. The appellant was, however, acquitted of all other charges. The other accused were acquitted of all the charges leveled against them. The appellant carried an appeal to the IIIrd Additional Sessions Judge, Thrissur. The Sessions Court dismissed the appeal. Being aggrieved, the appellant filed Criminal Revision Petition No.1931 of 2004

before the High Court of Kerala. By the impugned judgment, the High Court while confirming the conviction of the appellant under Section 326 of the Penal Code, reduced the sentence to eighteen months rigorous imprisonment. However, the High Court increased the compensation awarded to PW-2 Uddesh by the trial court from Rs.25,000/- to Rs.1 lakh. In default, the appellant was ordered to undergo rigorous imprisonment for fifteen months. After the impugned judgment, the appellant and PW-2 Uddesh have settled the case out of court amicably. Since the offence under Section 326 of the Penal Code is not a compoundable offence, the appellant has preferred this appeal urging that in view of the settlement, this Court should in exercise of its powers under Article 142 of the Constitution of India compound the offence.

4. We have heard learned counsel for the parties. We have perused the written submissions filed by the appellant. There is no dispute about the fact that the appellant and PW-2 Uddesh have amicably settled their dispute. Their respective counsel have confirmed this fact. Application is filed by the appellant praying that the offence may be compounded. PW-2 Uddesh has filed his affidavit confirming that he and the appellant have amicably settled the case out of court and he has no objection to the compounding of the case.

5. Offence punishable under Section 326 of the Penal Code is non- compoundable. There is no dispute about this. Learned counsel for the appellant contended that, in fact, the appellant cannot be convicted under Section 326 of the Penal Code because there is no consistent evidence that the appellant used any dangerous weapon. The evidence on record indicates that he used a stick. Therefore, the appellant could be punished only under Section 325 of the Penal Code for voluntarily causing grievous hurt which is compoundable by the person to whom the hurt is caused with the permission of the court. Counsel submitted that in the circumstances, the conviction of the appellant under Section 326 of the Penal Code be converted into one under Section 325 of the Penal Code and the offence be compounded.

6. Section 320 of the Criminal Procedure Code (“the Code”) pertains to offences punishable under the Penal Code only. It states which offences can be compounded, by whom they can be compounded and which offences can be compounded only with the permission of the concerned court. Sub-sections 3 to 8 thereof further clarify how Section 320 of the Code operates. Sub- section 9 thereof states that no offence shall be compounded except as provided by this section. The legislative intent is, therefore, clear. Compounding has to be done

strictly in accordance with Section 320 of the Code. No deviation from this provision is permissible.

7. In *Gian Singh v. State of Punjab & Anr.*,^[1] this Court was considering the scope of Section 482 and Section 320 of the Code. This Court clarified that in compounding of offences, power of criminal court is circumscribed by the provisions contained in Section 320 of the Code and the court is guided solely and squarely thereby. This Court described the scope of Section 320 of the Code as under:

“51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under IPC which may be compounded by the parties without permission of the court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an attempt to commit such offence or where the accused is liable under Section 34 or 149 IPC can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The Revisional Court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.”

8. It follows from the above discussion that since offence under Section 326 of the Penal Code is non-compoundable, permission to compound it, cannot be granted. We, however, find some substance in the submission of the appellant's counsel that on the basis of the evidence adduced in this case, it cannot be said with certainty that the appellant used an iron rod to hit PW-2 Uddesh. Though at the trial, the witnesses stated that the appellant used an iron rod to assault PW-2

Uddesh, admittedly the iron rod is not recovered and what is recovered is MO1, a wooden stick. We notice from the judgment of the Sessions Court that the case of the prosecution was that the appellant struck a blow on PW-2 Uddesh with a wooden stick causing injury to his left eye. This story appears to have been not accepted by the courts below because the witnesses improved the story in the Court that an iron rod was used. It has also come on record that PW-2 Uddesh filed a civil suit against the appellant for compensation and in that suit, he alleged that the appellant beat him with a wooden stick. The Sessions Court has referred to this suit and particularly the plaint [Ex- D1] which contains the statement that PW-2 was beaten with a wooden stick by the appellant. In our opinion, in the circumstances, it cannot be said with certainty that the appellant used an iron rod to beat the appellant. In such a situation, we are inclined to accept the version which is favourable to the appellant. In the circumstances, in our opinion, the appellant's conviction under Section 326 of the Penal Code needs to be converted into one under Section 325 of the Penal Code. We accordingly, convert the conviction of the appellant from one under Section 326 of the Penal Code to one under Section 325 of the Penal Code. Offence under Section 325 of the Penal Code is compoundable by the person to whom the hurt is caused with the permission of the court. The question is whether in this case, permission to compound the offence should be granted because PW-2 Uddesh to whom the hurt is caused has made a request to this Court that offence be compounded.

9. In *Ram Shanker & Ors. v. State of U.P.*,^[2] the complainant and the accused had settled the criminal case and an application was made for compounding the offence. The accused were convicted for offence under Section 307 of the Penal Code. This Court converted the conviction of the appellant from one under Section 307 of the Penal Code to that of an offence under Section 325 read with Section 34 of the Penal Code. Permission to compound the offence was granted and the appellants therein were acquitted.

10. Having converted the appellant's conviction into one under Section 325 of the Penal Code, we are inclined to follow the course adopted by this Court in *Ram Shanker* and grant permission to compound the offence. The offence was committed on 24/8/1996. Eighteen long years have passed thereafter. The appellant and PW-2 Uddesh who suffered the grievous injury have compromised the case. They wish to accord a quietus to their disputes. We, therefore, grant permission to compound the offence under Section 325 of the Penal Code to the appellant and PW-2 Uddesh, who is added as respondent 2 herein. The offence under Section 325 of the Penal Code is compounded. The impugned judgment is set aside. The

appellant Dasan is acquitted. He is on bail. His bail bond stands cancelled. The appeal is disposed of.

[1] (2012) 10 SCC 303

[2] (1982) 3 SCC 388(1)