

\$~R-5 & R-6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% DATE OF DECISION : APRIL 30, 2012

+ CRL.A. 226/2004

KISHAN LAL & ANR. Appellants
Through: Mr.M.L.Yadav, Advocate with
the appellants in person.

versus

STATE OF DELHI Respondent
Through: Mr.Navin Sharma, APP.

Om Prakash, son of late Shri Sohan Lal
and two injured namely Anil Kumar s/o
Gamender Singh and Gamender Singh
present in person.

AND

+ CRL.A. 265/2004

SURENDER @ BOBBY Appellant
Through: Mr.Subodh K.Pathak,
Mr.S.P.M.Tripathi and Mr.Rohit Kumar,
Advocates with the appellant in person.

versus

STATE Respondent
Through: Mr.Navin Sharma, APP

Om Prakash, son of late Shri Sohan Lal
and two injured namely Anil Kumar s/o
Gamender Singh and Gamender Singh
present in person.

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

PRATIBHA RANI, J. (Oral)

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1. Feeling aggrieved, the appellants have challenged the impugned judgment dated 12.03.2004 and order on sentence dated 16.03.2004 passed by the learned Addl. Sessions Judge, Karkardooma Courts, Delhi, vide which all the appellants were sentenced to undergo RI for a period of three years and fine of Rs.5,000/- in default of payment of fine to further undergo SI for six months, for having committed the offence punishable under Section 307/34 IPC.

2. In brief the case of prosecution is that on 29.09.2000 at about 10.00 p.m opposite Gali No.11 near House No.4/2391, Bihari Colony, Delhi, all the appellants, in furtherance of their common intention, inflicted injuries to Sohan Pal (since deceased), Om Prakash, Gamender and Anil Kumar with such intention or knowledge and under such circumstances that if any of the injured would have died due to said injuries, they would have been guilty of the murder.

3. During the course of hearing of the appeals, the appellants and Om Prakash, son of deceased injured Sohan Lal and two other injured namely Anil Kumar s/o Gamender Singh and Gamender Singh, son of Shri Banwari Lal submitted that they are neighbours. This occurrence took place in the heat of moment and after this occurrence and disposal of the case, they have settled their disputes amicably with the injured

persons and being neighbours they want to lead a peaceful life in their locality.

4. On behalf of the injured Sohan Lal, his son Om Prakash has filed an application for compounding of the offence, whereas the two other injured persons namely Anil Kumar s/o Gamender Singh and Gamender Singh, son of Shri Banwari Lal, present in Court today, have submitted that let bygone be bygone and the matter may be disposed of as they do not want the appellants to undergo the substantive sentence awarded to them by the learned Trial Court and make their families suffer due to this. Appellants present in Court also submit that they have learnt a lesson from the incident and now they are living peacefully with the two injured and family of injured late and Sohan Lal and that a lenient view may be taken against them while disposing of their appeals.

5. On behalf of State, it has been submitted that in view of the judgment of Apex Court in ***Gulab Das & Ors. vs. State of M.P. AIR 2012 Supreme Court 888***, appropriate orders may be passed by this Court.

6. In the above noted case, the appellant No.1 Gulab Das, Appellant No.2 Chetan were sentenced to undergo imprisonment for a period of one month under Section 323 IPC. However, 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. All the appellants challenged their conviction before the High Court of Madhya Pradesh at Jabalpur which failed and consequently the matter reached the Supreme Court as SLP was filed by the appellants.

7. During the pendency of appeal before the Supreme Court, the appellants and the complainant arrived at an amicable settlement and prayed for compounding of the offence. While disposing of the appeal, the Apex Court, though declined the prayer for compromise and maintained the conviction of the appellants, but reduced the sentence to the period already undergone by the appellants in view of compromise arrived at between the parties. The legal position in such a situation has been discussed in paras 7, 8 and 9 of the said decision and reproduced as under:-

"7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived 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 under Section 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. vs. State of J & K (1999) 2 SCC 213: (AIR 1999 SC 895), and Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667: (AIR 2009 SC 675). 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 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 quantum 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. Moreso, 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 normalize the relationship between them.

8. In the case in hand also, the appellants were convicted by the Trial Court vide the impugned judgment dated 12.03.2004 for the offence under Section 307/34. The appellants and the injured/complainant are neighbours and now living peacefully in the same locality. Their relations are normal and the complainant/injured as well as legal heir of injured Sohan Lal want peace to be restored amongst all the families i.e. the families of the appellants and that of the injured. Accordingly, while upholding the conviction of all the appellants, the substantive sentence awarded to them is reduced to the period already undergone by the appellants. However, the amount of fine which was earlier imposed by the Trial Court is enhanced to Rs.25,000/-.

9. It is stated by counsel for the appellants that all the appellants have already deposited the fine amount of Rs.5,000/- each as imposed by the Trial Court. Hence, the appellants shall now deposit an amount of Rs.20,000/- each in the concerned Trial Court within a period of two weeks from

today, in default of which all the appellants shall further undergo simple imprisonment for 3 months. Receipts showing the said deposit shall also be placed on record by the appellants.

10. The appeals are allowed to the aforesaid extent and the impugned judgment dated 12.03.2004 passed by the learned Trial Court is partially modified.

11. CRL.A. Nos.226/2004 and 265/2004 stand disposed of accordingly.

12. *Dasti.*

**PRATIBHA RANI
(JUDGE)**

APRIL 30, 2012
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