

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

+ **CRL.A. No. 150/2003 & CrI.M.A. 8195/2013**

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Reserved on: 20th May, 2013

Decided on: 04th September, 2013

ZAMEER AHMAD & ORS.

..... Appellants

Through: Mr. R.N. Mittal, Sr. Adv. with Mr.
Ankit Goel, Mr. Manoj Kumar, Advs.
with Appellants 1- 4 in person.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for State.
Mr. Meharban Ali, Mr. Ishrak Ali, Mr.
Shayak Ali & Mr. Ahmad Hussain,
complainant/ injured persons in
person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By CrI. M.A.No. 8195/2013 the Appellants seek compounding of the offences punishable under Section 147/148/307 IPC read with 149 IPC and in case of Appellant Babu Khan Section 27 Arms Act as well.

2. In the appeal the Appellants challenge the judgment dated 28th January, 2003 convicting them for offences punishable under Sections 147/148/307 IPC read with 149 IPC and in case of Appellant Babu Khan under Section 27 Arms Act as well and the order on sentence dated 27th February, 2003 directing them to undergo RI for 1 year u/s 147 IPC, 1 year RI u/s 148 IPC and 2 and a half years RI each u/s 307 read with Section 149 IPC and to pay a fine of Rs. 1000/- by each convict and in default of payment of fine to further undergo SI for 1 month by each convict.

Appellant No.5 Akbar Ali son of Bittan has already passed away and thus appeal qua him stands abated.

3. Learned counsel for the Appellants states that in view of decision in *Gian Singh Vs. State of Punjab and Anr. (2012) 10 SCC 303* this Court would be within its jurisdiction to direct compounding/ quashing of the offences under Section 482 Cr.P.C. even at the stage of appeal, as the parties have settled the matter and no useful purpose would be served in continuing with the litigation. Parties are near relations and any imprisonment will create further acrimony between them.

4. Learned APP on the other hand contends that in the present case the Appellants have been convicted for offence under Section 307 IPC read with Section 149 IPC. The allegation is of inflicting a gunshot injury and in view of seriousness of the offence, no quashing/ compounding can be permitted. Reliance is placed on *Ishwar Singh Vs. State of Madhya Pradesh AIR 2009 SC 675* and *Rajendra Harakchand Bhandari & Ors. Vs. State of Maharashtra & Anr. AIR 2011 SC 1821*.

5. Briefly the facts leading to the conviction of the Appellants for the aforementioned offences vide impugned judgment dated 28th January, 2003 and the order on sentence dated 27th February, 2003 are that one Meharban Ali got registered FIR No. 570/1991 at PS Malviya Nagar. Meharban Ali in his testimony before the Court deposed that on 6th November, 1991, he went to his maternal uncle Ahmad Hassan's house in New Colony Hauz Rani where his uncle told that he had exchange of abuses with a person named Muzaffar. On 7th November, 1991 he went to Malviya Nagar for work and came back to his house in lunch. After the lunch, when he was going out

near K-33 Kachi colony, he found Babu Khan, Zamir Ahmad, Atique Ahmad, Nisar Ali and Akbar Ali present. Appellant Babu Khan was having a dessi katta in his right hand, Zamir and Akbar dandas, Atique was having stones in his hand and Nisar Ali was without any weapon. Nisar Ali told his associates that the complainant had come for compromise on the previous day and they should teach him a lesson. All of them started abusing him and grappling with him. They gave him beatings. When he raised alarm, his brother Ashraf and Ishrak Ali came there. Sayak Ali and Ahmad Hassan also came there. When his brothers and maternal uncle asked the Appellants as to why they were beating him, Nisar Ali told Babu Khan to shoot at them whereafter Babu Khan fired shot from the katta. He received a shot from the katta on his forehead and on his face on left side. Ashraf Ali received shot on his hand and Ishrak Ali on his chest. Sayak Ali also received injuries. The complainant fell down and was taken to the hospital where his statement was recorded by the police vide Ex.PW1/A.

6. This version of PW1 the complainant is supported by PW2 Ishrak Ali son of Ashiq Ali in his examination-in-chief which was conducted on 20th September, 1999, however when his cross-examination was conducted after nearly 10 months on 25th July, 2000 he turned hostile. Thereafter all witnesses turned hostile and did not support the prosecution case.

7. However, the version of complainant is supported by the medical evidence on record. PW9 Ashok Kumar from AIIMS appeared as a witness and brought the original MLC register pertaining to Ashraf Ali, Meharban Ali and Ishrak Ali. He proved the three MLCs as Ex.PW9/A, PW9/B and PW9/C and identified the hand-writing of the doctors who had already left

the hospital. This witness has not been cross-examined by the Appellants. Further PW5 Dr. M.S. Sandhu appeared in the witness box and stated that he had examined the X-Ray plates pertaining to Ishrak Ali, Meharban Ali, Ashraf Ali and Sayak. Though he did not find fractures in their X-Ray plates, however he found multiple Radio Opaque foreign body overlying the chest and left forearm of Ishrak Ali; skull neck, hand and left forearm of Meharban Ali; right hand and right foot of Ashraf Ali and left thumb of Sayak. This witness has also not been cross-examined. It is thus apparent that all these witnesses received injuries from the palate shots and Ishrak Ali and Meharban Ali received the same on their vital parts. Meharban Ali has stated about the gunshot injuries to him and to this extent his version is corroborated by PW5 Dr. M.S. Sandhu. Thus the conviction of the appellants can be safely based on the testimony of this injured witness.

8. Learned counsel for the Appellants has stressed that the other Appellants were not aware that Babu Khan was holding a pistol and thus Section 34 IPC is not attracted. This contention is fallacious. A perusal of testimony of PW1 Meharban Ali shows that Babu Khan was holding a katta in his hand which was seen by him. Thus he was holding the katta before every one. Nisar Ali exhorted Babu Khan and Atique & Zamir who were having stones and danda respectively with them. Appellants were present at the spot in advance armed with various weapons and thus it cannot be said that they did not share the common intention.

9. Appellant Babu Khan has been convicted for offence under Section 27 Arms Act and justifiably so. The minimum sentence prescribed therein is three years rigorous imprisonment which he has been awarded. The

sentence cannot be reduced below the same. Thus, I find no reason to reduce the sentence of the Appellant Babu Khan.

10. A perusal of the decision in *Gian Singh (supra)* shows that though an offence under Section 307 IPC was not mentioned to be the one for which FIR could not be quashed, however guidelines were laid down for the Courts on the basis of which quashing could be directed. It was held:

“58. Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such

offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

11. It is thus evident that no hard and fast rule was laid down and whether the offences are fit for quashing or not would depend on facts and circumstances of each case. No doubt, compounding can be done even in appeal or revision, however the Appellants have been convicted for offences which are non-compoundable. In view of the injuries inflicted, I am of the considered opinion that the present case is not fit for quashing. However, in *Ishwar Singh v. State of Madhya Pradesh*, AIR 2009 SC 674 it was held that even if an offence cannot be compounded in case a compromise is reached between the parties during appeal, the same would be a sufficient reason to reduce the sentence.

12. In the present case the injuries have been inflicted on the injured witnesses by gunshots as multiple Opaque foreign bodies and were found lying in the chest and left forearm of Ishrak Ali; skull neck, hand and left forearm of Meharban Ali; right hand and right foot of Ashraf Ali and left thumb of Sayak. In view of these gunshots which were also given on the vital parts and the fact that the sentence is already on the lower side, in my opinion the sentence of two and a half years rigorous imprisonment awarded under Section 307 read with Section 149 IPC calls for no interference.

Consequently, the appeal and application are dismissed. The Appellants will undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 04, 2013
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