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

% ***Judgment dated 18.11.2013***

+ **CRL.A. 133/2005**

BAL CHAND & ORS. Appellants

Through : Mr.Jatan Singh, Adv.

versus

STATE NCT OF DELHI Respondent

Through : Mr.Firoz Khan Ghazi, Adv.
Complainant in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (Oral)

1. Present appeal is directed against the judgment dated 28.1.2005 and order on conviction dated 1.2.2005 whereby the appellants have been directed to undergo Rigorous Imprisonment for three years with fine of Rs.15,000/-, each, and in case of default of payment of fine, further Rigorous Imprisonment for six months each. It was also directed that the period of detention already undergone during the investigation/trial shall be set-off. In the event of deposit of fine, the same would be paid as compensation to Anil Kumar, after expiry of the period of appeal or after and subject to decision in the appeal, if preferred.

2. The necessary facts, as noticed by the trial court, for disposal of the present case are as under:

"1. On 26.12.2001 at 0900 hours an information was received in Police Station Nand Nagri (PS, hereafter) from Police Control Room (PCR), as conveyed by Lady taken place in

premises No.A 3/384, East Gokul Pur, Amar Colony. This information was recorded as DD No.3A (Ex.PW6/A) by Duty Officer ASI Giri Raj (PW6) who handed it over to HC Mahinder (PWs). It is stated in his case that PW8 HC Mahinder accompanied by a constable went to the place in question where he found that the injured person had been taken to GTB Hospital by PCR. No eye witness could be located at the scene and so PW8 proceeded to GTB Hospital where he found Anil (PW2) son of Veer Prakash Sharma, resident of the said address admitted in injured state against MLC No. B 5293/01. The MLC (Ex.PW1/A) had been prepared by Dr. Adarsh (PW-1), and the injured person was declared fit for statement, PW8 recorded the statement of PW2 Anil Kumar (vide Ex.PW8/A also Mark PW2/A) and on that basis found it to be a case involving offences U/s 323/308/34 IPC. He prepared his Tehrir (Ex.PW8/B) was sent it to the Police Station for registration of FIR at 11:20 AM on 26.12.2001. On this Tehrir, FIR (Ex.PW6/B) was registered by PW6 ASI Giri Raj at 11:40 AM on the same day. The investigation was thereafter handed over to SI Kans Raj (PW10).

2. PW10 SI Kans Raj prepared Site Plan (Ex.PW10/A) at the instance of the injured person and thereafter arrested Bal Chand (Accused No.1) and Amit Kumar @ Bunti (Accused No.2) after personal search vide memos (Ex.PW10/B and C). He interrogated accused no.1 (A2) and accused no.2 (A2) and recorded their disclosure statements (vide Ex.PW8/C and D respectively). It is alleged that A1 and A2 led PW10 SI Kans Raj, Investigation Officer (IO) to the scene of occurrence in which respect a pointing out memo (Ex.PW10/D) was prepared.

3. It is alleged that at the instance of A1, wooden stick (Ex.P1) used in the crime was recovered from under the bed of

his house vide memo (Ex.PW5/A).

4. The name of Toni S/o Bal Chand had also been taken by the victim and thus, the said person named Toni (Accused No.3) was also wanted by the Police. It appears Accused No.3 (A3) surrendered himself before Shri R.K. Chauhan, Metropolitan Magistrate on 7.1.2002 and with the permission of the learned MM, the IO took him in custody after personal search (Ex.PW10/E) as per memo of arrest (Ex.PW7/A).

5. During the investigation that followed, the IO obtained opinion about the nature of injuries from PW4 Dr. Amitabh Sharma in GTB Hospital on 8.1.2002 which confirmed the injury to be grievous in nature.

6. Charge-sheet was laid before the court of Metropolitan Magistrate on 16.4.2002 seeking trial of A1, A2 and A3 for offences U/s 308/323/34 IPC. The learned MM took cognizance and issued process and in due course, after compliance with Section 207 Cr.PC, committed the case to sessions as per order dated 29.7.2002.

7. My learned predecessor considered the question of charge and found charge made out for offence U/s 308/34 IPC. Charge was accordingly framed on 23.10.2002 to which all the accused pleaded not guilty.

8. After plea of the accused had been recorded, prosecution led evidence, in the course of which ten witnesses came to be examined. These include Dr. Adarsh (PW1); Anil Kumar Sharma (PW2); Rajan S/o PW2 (PW3); Dr. Amitabh Sharma (PW4); Ct. Ram Lakhan (PW5); ASI Giri Raj (PW6); Ct. Jagdish (PW7); HC Mahinder (PW8); Lady Ct. Chand Kiran (PW9) and SI Kans Raj (PW10)."

3. In defence the appellants have led evidence of two witnesses Sh.Lala, DW-1, and Sh.Sushil, DW-2, Record Clerk of GTB Hospital.

4. Learned counsel for the appellants submits that he has instructions not to contest this matter on merits, however, he prays that since the parties have arrived at an amicable settlement, the order on sentence be modified to the period already undergone.
5. In support of his submission, learned counsel for the appellants has placed reliance in the case of **Mukesh Kumar and Ors. v. State of Rajasthan**, reported at 2012 (11) SCALE 330, more particularly paras 8 and 9, which read as under:

“8. The Court has not sentenced the Appellants to imprisonment for the offence punishable under Section 324 read with Section 34 of the Indian Penal Code separately as the sentence awarded for the offence punishable under Section 326 read with Section 34 of the Indian Penal Code was considered enough. The fact, however, remains that the Appellants stand convicted for a non-compoundable offence. The settlement/compromise and the prayer for composition based on the same, therefore, remains inconsequential in the light of the judgment of this Court in Ram Lal and Anr. v. State of Jammu and Kashmir MANU/SC/0034/1999 : (1999) 2 SCC 213, where this Court has held that an offence can be compounded only if it is compoundable no matter the Court may take into consideration the settlement between the parties while awarding sentence to the Appellants. The following passage is apposite in this regard:

3. ...Section 320 which deals with "compounding of offences" provides two Tables therein, one containing descriptions of offences which can be compounded by the person mentioned in it, and the other containing descriptions of offences which can be compounded with the permission of the court by the persons indicated therein. Only such offences as are included in the said two Tables can be compounded and none else. Sub-section (9) of Section 320 of the Code of Criminal Procedure, 1973 imposes a legislative ban in the following terms:

320(9) No offence shall be compounded except as provided by this section.

4. It is apparent that when the decision in Mahesh Chand was rendered, the attention of the learned Judges was not drawn to the aforesaid legal prohibition.

Nor was the attention of the learned Judges who rendered the decision in Y. Suresh Babu drawn. Hence those were decisions rendered per incuriam. We hold that an offence which law declares to be non-compoundable even with the permission of the court cannot be compounded at all. the offence under Section 326 Indian Penal Code is, admittedly, non-compoundable and hence we cannot accede to the request of the learned Counsel to permit the same to be compounded.

5. However, considering the fact that the parties have come to a settlement and the victims have no grievance now and considering the further fact that the first Appellant has already undergone a period of imprisonment of about six months, a lenient view can be taken and the sentence can be reduced to the period which he has already undergone. We order so and direct the jail authorities to set him at liberty forthwith.

9. We, accordingly, allow this appeal but only in part and to the extent that instead of Section 326 read with Section 34 of the Indian Penal Code the Appellants are held guilty of offences punishable under Sections 324 and 325 both read with Section 34 of the Indian Penal Code. We further direct that in the light of the settlement that has been arrived at between the parties, the period already undergone by the Appellants would suffice. The judgment and order passed by the High Court is in that view modified and the sentence awarded to the Appellants reduced to the period already undergone. This appeal is allowed in part and to the extent indicated above.”

6. Counsel for the appellants has further relied upon ***Ishwar Singh v. State of Madhya Pradesh***, reported at (2008) 15 SCC 667 more particularly paras 13 to 16, which read as under:

“13. Now, it cannot be gainsaid that an offence punishable under Section 307, IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time,

however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence.

14. In Jetha Ram v. State of Rajasthan (2006) 9 SCC 255, Murugesan & Ors. v. Ganapathy Velar MANU/ SC/ 2358/ 2000 : 2002 Cri.L.J. 260 and Ishwarlal v. State of M.P. JT 1988 (3) SC 366 (1), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of Rajasthan MANU/SC/0268/1988 : 1988 Cri.L.J.121, such offence was ordered to be compounded.

15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned Counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

16. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No. 1) is reduced to the period already undergone."

7. Counsel for the appellants has also relied upon ***Dhananjay @ Dhananjay Kumar Singh v. State of Bihar & Anr.***, reported at 2007 [2] JCC 1210, more particularly paras 13 and 14, which read as under:

"13. It is true that having regard to the decision of this Court in **Bankat** (supra) that the Courts would have no power to

allow compromise of a prosecution when the same is not permissible in terms of Section [320](#) of Code of Criminal Procedure. Therein it was held:

In our view, the submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under IPC, a complete scheme is provided under Section [320](#) of the Code. Sub-section (1) of Section [320](#) provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in column 3 of the said table. Further, Sub-section (2) provides that the offences mentioned in the table could be compounded by the victim with the permission of the court. As against this, Sub-section (9) specifically provides that "no-offence shall be compounded except as provided by this section". In view of the aforesaid legislative mandate, only the offences which are covered by Table 1 or Table 2 as stated above can be compounded and the rest of the offences punishable under IPC could not be compounded.

14. We may, however, notice that in **Badrilal v. State of M.P.** (2005) 7 SCC 55 a Division Bench of this Court held as under:

A joint petition of compromise has been filed on behalf of the parties in which prayer has been made for recording the compromise. The offence under Section [307](#) IPC is not a compoundable one, therefore, compromise cannot be recorded, but at the same time it is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased. In the facts and circumstances of the case, we are of the view that ends of justice should be met in case the sentence of imprisonment awarded against the appellant by the trial court and reduced by the High Court is further reduced to the period already undergone."

8. Complainant, who is present in Court, submits that he has arrived at an amicable settlement with the appellants and in terms of the settlement he has received the compensation. He further submits

that the parties are neighbours, they reside in close vicinity, they have decided to bury the past and reside peacefully, and thus he has no objection if the order on sentence is modified to the period already undergone.

9. Learned counsel for the State submits that the appellants should be directed to pay further compensation to the victim.
10. Heard learned counsel for the parties and the complainant, who appears in person, and given my thoughtful consideration to the matter. The Apex Court in the cases of **Mukesh Kumar** (supra), **Ishwar Singh** (supra) and **Dhananjay @ Dhananjay Kumar Singh** (supra), has held that where the parties have arrived at an amicable settlement, the period of sentence already undergone would be sufficient.
11. Having regard to the fact that the parties are neighbours; in order to bury the past and reside peacefully they have arrived at an amicable settlement and also executed a compromise deed in the year 2010; the appellants have no criminal record; even after their having been released on bail the appellants have continued to reside peacefully in the neighbourhood; and taking into consideration the statement made by the complainant that he has no objection if the order on sentence is modified, the present appeal is allowed in part. The order on sentence is modified to the period already undergone, subject to the appellants paying further compensation in the sum of Rs.25,000/- to the complainant within one week from today, receipt

of which will be submitted by the appellants with the counsel for the State. Bail bonds of the appellants stand cancelled and surety stands discharged.

12. Appeal stands disposed of.

NOVEMBER 18, 2013
msr

G.S.SISTANI, J