

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 11th December, 2014

+ CRL.A.633/2013 & Crl. MB. 2241/2013, Crl. MA.2623/2014 & Crl. MB. 1407/2013

SATISH

..... Appellant

Through: Mr. Arun Aggarwal, Advocate

Versus

STATE

..... Respondent

Through: Mr. M.N. Dudeja, Additional Public
Prosecutor for the State along with SI
Mousam Chani, PS Mayur Vihar

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. Feeling aggrieved by the judgment dated 06.05.2013 and order on sentence dated 10.05.2013 in Sessions Case No.31/12 arising out of FIR No. 323/10 whereby the appellant was convicted u/s 307/452 IPC and sentenced to undergo RI for a period of 5 years with fine of Rs.5,000/- u/s 307 IPC in default to undergo 6 months SI and 3 years RI with fine of Rs.5,000/- u/s 452 IPC in default to undergo 6 months SI, present appeal has been preferred.

2. During the course of arguments, learned counsel for the appellant under instructions from the appellant submitted that he does not challenge the conviction of the appellant for offence u/s 307/452 IPC. However, he prayed for a liberal view in the quantum of sentence on the ground that the appellant has remained in jail for a period of approximately 8 months; parties are closely related to each other. With the intervention of close relatives an amicable settlement has been

arrived at between the parties; the injured have been duly compensated by paying a sum of Rs.2,50,000/-; a sum of Rs. one lakh is already lying deposited with the Registrar General of this Court which may be disbursed to the injured; fine has already been deposited. Reliance was placed on *Basara and Ors. v. State and Anr.* pronounced by a single Bench of this court on 03.09.2007.

3. Ld. Additional Public Prosecutor for the State, on the other hand, submitted that keeping in view the fact that injuries were inflicted on a vital part of the body i.e. neck, hence no leniency is warranted.

4. The conviction of the appellant was rightly not challenged by learned counsel for the appellant inasmuch as the prosecution case lies in a narrow compass. The appellant is *mausa* of injured Kapil. Earlier he used to reside with his family in the house of complainant – Kapil as tenant. Few days prior to the incident, there was an altercation between kapil and son of the accused on the issue of sitting on the roof. Satish vacated the house on 19.07.2010. On 01.08.2010 at about 8.30 p.m, father-in-law Kamal Kumar, mother-in-law Urmila Devi and brother-in-law Shubham had come to his house. Suddenly accused Satish forcibly entered the house with a sword in his hand. He was under the influence of liquor and attacked them with sword due to which Kapil sustained injuries on his neck and Shubham received injuries on both his hands. On hearing the noise, neighbours collected at the spot. Accused was overpowered and sword was snatched from his possession. The injured were rushed to LBS hospital by PCR van. During the course of investigation, accused was arrested and charge sheet was submitted against him u/s 307/458/506 IPC and Section 27/54/59 Arms Act.

5. In order to substantiate its case, prosecution examined ten witnesses. After meticulously examining the evidence led by the prosecution and the defence taken

by the accused vide impugned judgment dated 06.05.2013, the appellant was convicted u/s 452/307 IPC and sentenced separately. The case of the prosecution stands substantiated from the testimony of the injured witnesses which find due corroboration from PW4 Urmila Devi, PW5 Kamal and the medical evidence. Hence, no interference is called for in the conviction order.

6. A joint application was filed by the appellant and the complainant/injured Kapil Beniwal and Shubham for disposal of the appeal consequent to the settlement arrived at between the parties. In ***Basara and Ors.***(supra), the FIR was registered against the petitioner u/s 307/34 IPC and the proceedings were pending before the learned Additional Sessions Judge when the parties compromised the subject matter of the FIR amongst themselves and therefore request was made for quashing of the FIR. By relying upon ***Ram Pujan v. State of UP; Y. Suresh Babu v. State of Andhra Pradesh*** and ***Mahesh Chand v. State of Rajasthan***, where the Supreme Court had granted leave to compound the offences which were non-compoundable and serious in nature, the FIR was quashed by observing that although offence u/s 307 IPC is non compoundable but in ***B.S.Joshi v. State of Haryana*** it was held by the Supreme Court that Section 320 of the Cr.P.C 1973 does not limit or affect the powers of the High Court to quash the criminal proceedings or FIR or complaint even in non-compoundable offences. Moreover in the instant case, the appellant is not even seeking his acquittal on the ground of compounding of the offence. He invokes the discretion of the Court for taking a lenient view in the quantum of sentence.

7. In ***Ram Pujan's*** case (Supra) appellants and 3 others were convicted by Sessions Court under Sections 326 and 323 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for a period of 4 years on former count and 3 months on latter count. On appeal to the High Court, the conviction of

the appellants was altered to that under Sections 326 and 323 read with Section 34 IPC and each of them was sentenced to undergo rigorous imprisonment for a period of 2 years. High Court rejected the application for compromise filed on behalf of injured and the appellants. Noting the compromise Supreme Court reduced the sentence awarded to the appellants. It was held that even though major offences for which appellants were convicted were non-compoundable but the fact of compromise can be taken into account in determining the sentence.

8. In *Y.Suresh Babu's* case (Supra) appellant was convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for a period of one year. Treating the matter as a special case, leave to compound the offence was granted by the Supreme Court.

9. In *Mahesh Chand's* case (supra) accused were acquitted by the Trial Court but they were convicted by the High Court for the offence under Section 307 IPC. There was a counter case arising out of the same transaction which was compromised. Considering the nature of the case and circumstances under which offence was committed, leave to compound the offence was granted by the Supreme Court.

10. In *Ishwar Singh v. State of Madhya Pradesh*, (2008) 15 SCC 667, the Court was concerned with a case where the accused-Appellant was convicted and sentenced by the Additional Sessions Judge for an offence punishable Under Section 307, Indian Penal Code. The High Court dismissed the appeal from the judgment and conviction. In the appeal, by special leave, the injured-complainant was ordered to be joined as party as it was stated by the counsel for the Appellant that mutual compromise has been arrived at between the parties, i.e., accused on the one hand and the complainant - victim on the other hand during the pendency of the proceedings before the Court. It was prayed on behalf of the Appellant that

the appeal be disposed of on the basis of compromise between the parties. In para 12 (pg. 670) of the Report, the Court observed as follows:

“Now, it cannot be gainsaid that an offence punishable Under Section 307 Indian Penal Code 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.”

11. The Supreme Court also referred to its earlier decisions in **Jetha Ram v. State of Rajasthan**, (2006) 9 SCC 255; **Murugesan v. Ganapathy Velar**, (2001) 10 SCC 504; **Ishwarlal v. State of M.P.**, (2008) 15 SCC 671 and **Mahesh Chand and Anr. v. State of Rajasthan**, 1990 (supp) SCC 681 and noted in paragraph 13 (pg. 670) of the Report as follows:-

*“In **Jetha Ram v. State of Rajasthan**, **Murugesan v. Ganapathy Velar** and **Ishwarlal v. State of M.P.** 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** such offence was ordered to be compounded.*

12. Then, in paragraphs 14 and 15 (pg. 670), the Supreme Court held as under:

14. 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.

15. 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 was not released on bail. Considering the totality of facts and circumstances, in our opinion, the ends of justice would be met if the sentence of imprisonment awarded to the Appellant (Accused 1) is reduced to the period already undergone."

13. In the instant case the parties are closely related to each other as appellant is *mausa* of injured Kapil. Although it is true that the appellant attacked with sword on the neck of injured Kapil and Shubham also received injuries on both his hands, the injuries were opined to be simple by the doctor. As per the nominal roll, the appellant remained in jail for a period of 6 months and 16 days besides earning remission of one month and seventeen days. No previous involvement in any other case has been reported by the State. He was a government servant employed in UP but due to the pendency of this litigation his services has been terminated. He has duly compensated both the injured by paying a sum of Rs.2,50,000/-. Besides that, in pursuance to the directions given by this Court on 10.12.2013, a sum of Rs. one lakh is lying deposited with the Registrar General of this Court which be disbursed equally to both the injured along with accrued interest. The ends of justice will be met if keeping in view the totality and circumstances of the case, the sentence is modified.

14. Under the circumstances, while maintaining the conviction of the appellant, the substantive sentence of the appellant is modified to the period already

undergone while keeping the quantum of fine unaltered. The appellant has already placed on record the deposit of fine receipt.

The appeal stands disposed of accordingly. All the pending applications also stand disposed of.

Copy of the judgment along with Trial Court record be sent back.

SUNITA GUPTA, J

DECEMBER 11, 2014/*as*