

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

Date of Decision: 25th August, 2014

+ **CRL.A. 652/2013**

SANJAY @ PUNTI & ANR.

..... Appellants

Through: Mr. V.P. Katiyar, Advocate with
both the appellants in custody

Versus

STATE

..... Respondent

Through: Mr. Sunil Sharma, Additional
Public Prosecutor for the State
with SI Rohit, PS Maurice Nagar
Complainant in person

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 9th April, 2013 and order on sentence dated 22nd April, 2013 passed by the learned Additional Sessions Judge/Special Judge, NDPS-02 (Central), Delhi in Sessions Case No.45/2011 arising out of FIR No.93/2010 u/s 307/34 IPC registered with PS Maurice Nagar whereby the appellants were sentenced to undergo rigorous imprisonment for 5 years each and fine of Rs.10,000/- each u/s 307/34 IPC, in default of payment of

fine, simple imprisonment of three months each. Benefit of Section 428 Cr.P.C. was given to the convicts.

2. The gravamen of the prosecution case is that FIR No.93/2010, PS Maurice Nagar was registered on the statement of PW1-Pradeep Kumar @ Buntty S/o Vijay Pal, R/o H. No. 723, Nehru Kutiya Near Ambedkar Park, Malka Ganj, Delhi-07 on 13th November, 2010. In his statement, complainant Pradeep Kumar stated that on 12th November, 2010, he along with Rajesh and Parvesh went to a Dhaba at Malka Ganj to take dinner. After dinner at about 12:00 AM, they were returning home in their car No.DL-3-CK-7831 Maruti Zen and when they reached Malka Ganj crossing, two boys, namely, Sanjay @ Puntti and Raju @ Hakla riding on a motorcycle came near the car. Sanjay was driving the motorcycle. Thereafter, Raju who was pillion, fired on their car and the bullet hit on the right shoulder of Pradeep Kumar. Rajesh who was driving the car tried to take a right turn towards Gurudwara Road but in the effort, the car hit the police barricade. After that trio occupants came out from the car, they narrated the incident to the police personnel who were present near the barricades. In the meantime, Sanjay and Raju came again on the

motorcycle and fired 2-3 times on Pradeep, Rajesh and Parvesh and fled away from the spot. Pradeep Kumar was got admitted in Hindu Rao Hospital vide MLC No.8507/10 (Ex.PW19/A) and he was discharged after 15 days. The MLC result of the injured obtained from hospital and nature of injury was found to be simple. During the investigation both the accused persons were arrested and charge sheet of the case was filed on 5th May, 2011. After the case was committed to the Court of Sessions, charge under Section 307/34 IPC was framed against the appellants who pleaded not guilty and claimed trial.

3. In order to nail the accused persons, prosecution examined 23 witnesses. The accused persons in their statement recorded u/s 313 Cr.P.C. claimed their innocence and alleged false implication in this case. According to the accused Sanjay @ Puntti, he was falsely implicated on account of previous enmity with PW3-Rajesh who had been named as an accused in murder trial with respect to his brother Rajesh, S/o Om Prakash in case FIR No.303/08, PS Sabzi Mandi. According to accused Raju @ Hakla, he was falsely implicated by PW3-Rajesh due to his inimical terms with co-accused Sanjay @ Puntti. One witness was examined in defence. By impugned

judgment, the appellants were convicted under Section 307/34 IPC and sentenced as mentioned hereinbefore. Therefore, the appellants have assailed the findings by filing the present appeal.

4. During the pendency of the appeal, an application bearing CrI.M.A. No. 9288/2014 was moved by the appellant submitting that they are not challenging their conviction. However, it was submitted that the matter has been compromised between the parties. As such, the sentence be modified/reduced. The appellants were also called from jail and they reiterated that they are not challenging their conviction on merits.

5. I have also gone through the impugned judgment and a perusal of the same goes to show that the same does not suffer from any infirmity which calls for interference, inasmuch as, the case is based on eye-witness account of the incident. PW1-Pradeep Kumar was the complainant who had narrated the incident succinctly by deposing that in the month of November, 2010 at about 10:30 P.M., he along with Rajesh and Parvesh took dinner at *dhaba* in Malka Ganj, Delhi. After taking dinner, they were returning home in Maruti Zen car driven by his friend Rajesh. At Malka Ganj crossing, when they took a U-turn,

two boys came on motorcycle and fired at their car. The motorcyclist then crossed their car and he could not see them due to the filming of window panes. Due to this incident, driver Rajesh got perplexed and struck against a barricade. They informed the policemen who were present over there. A call was made to 100 number. Due to firing, he sustained bullet injuries on his shoulder. He went to Hindu Rao Hospital where he was medically examined. His statement Ex.PW1/A was recorded by the police. The witness, however, could not identify the accused persons. PW3-Rajesh has corroborated the testimony of PW1 Pradeep Kumar regarding the incident by deposing that on 12th November, 2010, he along with his friends Pradeep and Parvesh were coming after taking dinner in a car driven by him at Malka Ganj Chowk. When they took a U-turn, two persons came on the motorcycle and fired from a pistol on them which hit his friend Pradeep. He further deposed that accused Sanjay @ Puntti was driving the motorcycle and accused Raju @ Hakla was sitting as a pillion. The shot was fired by the accused Raju @ Hakla. At some distance near the petrol pump, the accused took U-turn and again fired on them thrice. He stopped the car near the police picket and he informed the

police about the incident. PCR was also called which removed Pradeep to the hospital where he was medically examined. He further deposed that both the accused persons were known to him prior to the incident as the relations between them were strained since long. His car was seized by the police vide Memo Ex.PW2/E. Empty cartridge and glass pieces were also seized by the police from the road vide memo Ex.PW2/C and Ex. PW2/D. Site Plan Ex.PW3/B was prepared by the police at his instance. PW4 Parvesh is also a witness of the incident. He further deposed that motorcycle was driven by accused Sanjay and he was informed by PW3-Rajesh that bullet was fired by the accused Raju @ Hakla. Further, accused Sanjay was arrested on 2nd January, 2011 and from his possession, improvised pistol was recovered. The same was sent to FSL, Rohini. As per the FSL report, Ex.PZ, seized cartridges cases, which were recovered from the spot near barricade were fired through the improvised pistol. This also proves the presence of accused Sanjay @ Puntti at the spot of occurrence at the time of incident. Accused Raju @ Hakla was arrested in case FIR 318/2010 u/s 302/452/506 IPC, Police Station Aman Vihar on 29th January, 2011 and from his possession, a

motorcycle bearing No. DL-8S-AC-1910 was seized. There was no cross-examination of Inspector Naresh Malik that this motorcycle was not used for the commission of this offence. Under the circumstances, the involvement of both the accused in the commission of crime by causing bullet injury to the victim with such intention and knowledge that if it could have caused the death of the victim, they would have been guilty of murder was duly proved.

6. The only plea taken by the learned counsel for the appellant is that the matter has since been compromised between the parties and the compromise deed has been placed on record. As such, the sentence be modified. It was further submitted that after the pronouncement of judgment in *Gian Singh's* case, this Court in number of cases modified the sentence on the basis of compromise. This prayer is strongly opposed by the learned Public Prosecutor for the State on the ground that after full-fledged trial, the appellants have been convicted for offence under Section 307/34 IPC. Reference was also made to the antecedents of the appellants for submitting that appellants Sanjay @ Panti is involved in 8 cases whereas Raju @ Hakla is involved in 74 criminal cases. List of previous involvements

were enclosed along with the status report. As such, it was submitted that even the sentence is not required to be modified.

7. The effect of compromise in a case under Section 307 Indian Penal Code including judgment pronounced by Apex Court in ***Gian Singh's*** case was considered by Hon'ble Supreme Court in its latest pronouncement ***Narinder Singh and Ors. vs. State of Punjab and Anr.***, (2014) 6 SCC 466 and following principles were laid down by which the High Courts would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:-

"(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by Public Servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307 Indian Penal Code would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used etc.

Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

*(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 Indian Penal Code is committed or not. **Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by trial court. Here charge is proved under Section 307 Indian Penal Code and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.***

8. In view of these guidelines since after a full-fledged trial, the appellants were convicted and the matter is at the appellate stage, the mere fact that the parties have entered into a compromise during the pendency of the appeal, cannot furnish a ground for acquittal of the appellant.

9. Learned counsel for the appellant sought reduction in the sentence and reliance was placed on Criminal Appeal No. 1285/2012 decided on 20th February, 2014 in a case under Section 307 IPC whereby the sentence was reduced by Hon'ble Mr. Justice S.P. Garg. In that case, the appellant was convicted under Section 307 IPC and was sentenced to rigorous imprisonment for 7 years with fine of Rs.50,000/-. During the pendency of the appeal, the matter was compromised between the parties who were closely related to each other. The appellant had clean antecedents and was not involved in any other criminal case. His jail conduct was found to be satisfactory. He was aged about 25 years on the date of incident. Even learned Public Prosecutor had given no objection to modify the sentence. Therefore, the sentence was reduced.

10. However, things are entirely different in the instant case. The

prayer is vehemently opposed by learned Public Prosecutor for the state on the ground that the appellant Sanjay @ Punty is involved in 8 criminal cases while Raju @ Hakla is involved in 74 criminal cases. List of their previous involvements was enclosed. Latest nominal roll of the appellants are also called. It has been reported by the Superintendent, Jail that appellant Raju @ Hakla is facing trial in following cases:-

1. FIR No. 318/2010, u/s 147/149/302/323/376/452/506 IPC, PS Aman Vihar
2. FIR No. 176/04 u/s 324/34 IPC, PS Mandir Marg
3. FIR No 275/07 u/s 326/452/34 IPC, PS Anand Parbat.

His conduct has been reported to be unsatisfactory due to various punishments imposed upon him. It is further reported that he has been lodged in High Security Ward.

Even as regards the appellant Sanjay @ Punty, it was reported that he is facing trial in following cases:-

1. FIR No. 29/2013 u/s 324/34 IPC, Police Station Sabzi Mandi (on bail).
2. FIR No. 03/2011 u/s 25 Arms Act, Police Station Sabzi Mandi.

It is further reported that he was convicted in FIR No. 507/07 u/s 425/328/506 IPC, Police Station Sabzi Mandi

(already undergone) on 23rd November, 2013.

His conduct has also been reported to be unsatisfactory.

11. Under the circumstances and in view of the antecedents of the appellants who are involved in various other serious offences including murder case, no interference is called for in the sentence awarded to them. As such, there is no merit in the appeal and the same is accordingly dismissed.

(SUNITA GUPTA)
JUDGE

AUGUST 25, 2014

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