

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRA No. 3/2010

c/w

ROBCR No. 1/2018

Sat Pal, aged 32 years
S/o. Sh. Balwant Raj R/o. Village
Dharam Khoo Gharota,
Tehsil and District, Jammu
At present lodged in District Jail
Ambhphalla, Jammu

.....Appellant(s)/Petitioner(s)

Through: Mr. P. C. Sharma, Adv.

vs

State of Jammu and Kashmir

..... Respondent(s)

Through: Mr. P. D. Singh, Dy.AG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER

21.12.2023

ORAL

1. The present appeal has been filed by the appellant against the judgment passed by the court of Learned 3rd Additional Sessions Judge, Jammu (hereinafter to be referred as 'the trial court') dated 04.02.2010, whereby the appellant has been convicted for commission of offence under section 326 RPC as well as against the order dated 05.02.2010, where by the appellant was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 1000/- and in default of the payment of fine, the appellant was ordered to undergo imprisonment for one month.
2. The appellant has impugned the judgment of conviction and order of sentence (supra) on the grounds that the learned trial court has not rightly appreciated the evidence and has ignored the material

contradictions in the statements of the prosecution witnesses as the statement of the complainant and other witnesses were contradictory to each other.

3. Mr. P. C. Sharma, learned counsel for the appellant has vehemently argued that the learned trial court has wrongly convicted the appellant when there were material inconsistencies and infirmities in the evidence led by the prosecution. He further argued that the victim has entered into a compromise with the appellant and the appellant has already placed on record the compromise agreement entered into between the victim and the appellant.
4. *Per contra*, Mr. Pawan Dev Singh, learned Dy.AG representing the respondent has vehemently argued that the cogent and convincing evidence was led by the prosecution during the course of trial and the learned trial court after due and proper appreciation of the evidence, has convicted the appellant and in fact, there is no infirmity in the judgment passed by the learned trial court that may warrant interference by this Court. He further submitted that the offence under section 326 RPC is non-compoundable, as such, the appellant as well as the victim could not have entered into a compromise in respect of non-compoundable offence.
5. Heard and perused the record including the record of the trial court.
6. The brief facts as they sprout from the charge-sheet are that on 23.04.2000, complainant-Ram Paul lodged a verbal report with Police Station, Kana Chak that on 23.04.2000 at around 10.30 PM, Ajeet

Kumar and Balwant Raj came to their house and asked that his brother Kuldeep Raj and father Hans Raj should accompany them to their home. The complainant along with his brother and father went to the house of Ajeet Kumar. Their neighbour Kala Ram also came on spot. Krishan Lal, Ajeet Kumar, Balwant Raj and Sat Pal asked Kuldeep Raj as to why he teased their niece and in response Kuldeep Raj stated that he was not at fault and he never acted in such a manner with their niece. Thereafter, all the four accused persons started abusing and the appellant Sat Pal armed with scissors attacked Kuldeep Raj and injured him on the right side of the stomach, who fell down on the floor. The other accused hit Kuldeep Raj and Hans Raj with fist blows and sticks and locked them in the room. The complainant somehow managed to escape and approached the Police Station. On receipt of this information, FIR bearing No. 65/2000 was registered for commission of offences under sections 307, 342 and 34 RPC. All the accused persons other than the appellant were charged for commission of offences under sections 323, 307, 342 and 34 RPC whereas the appellant was charged for commission of offences under sections 307, 326, 341, 342 and 34 RPC.

7. In order to prove the case, the prosecution examined complainant-Ram Paul, PWs Kala Ram, Kuldeep Raj, Hans Raj, Gyan Singh, Vikil Chand, Vishwa Mitter, Dr. Raman Bhagat, Kuldeep Raj(victim), Jatinder Kapahi and Sat Pal, I.O.

8. Learned trial court after appreciation of evidence, acquitted three accused, however, convicted the appellant under section 326 RPC and sentenced him as mentioned above. In order to appreciate whether the learned trial court has rightly appreciated the evidence or not, this Court has gone through the statements of the prosecution witnesses.
9. PW-1-Ram Pal(complainant) stated that on 22.04.2000 at 10.30 PM, Balwant Raj came to their house and asked him to come to their house along with his brother Kuldeep Raj. They went to the house of the accused and in the meanwhile, Kala Ram also came on spot. Accused asked Kuldeep Raj as to why he misbehaved with his niece but Kuldeep Raj denied the same. In the meanwhile, Sat Pal (appellant) inflicted an injury on the right side of stomach of Kuldeep Raj with scissors and he fell down in pool of blood. The other accused assaulted him with fist and stick blows and thereafter, he, his father and Kuldeep Raj were locked in the room. He anyhow broke open the door and escaped, whereas the others remained unconscious inside the room. He lodged the report with the Police Station, Kahna Chak. The Police took Kuldeep Raj and Hans Raj from the room to the hospital and recovered sticks the next day. He proved the seizure memo (ExPW-RP). He also proved the seizure memos of stick and clothes (ExPW- RP/1 and RP/2). During cross-examination, he stated that they were sitting in the house of Ajeet Kumar and other accused were also present there. Prior to this occurrence, they had good relations with the accused and used to go to each other houses. He expressed

ignorance as to how the appellant took scissors to hit Kuldeep Raj. He had attacked Kuldeep Raj only once with the scissors. He and his farther thereafter hit with sticks. Though he sustained injuries, but he did not get himself checked up by the Doctor. No neighbour was present on spot. When the Police came on spot, accused Sat Pal run away and other accused were arrested by the Police.

10. PW-2 Kala Ram did not support the prosecution case.
11. PW-3 Hans Raj deposed in identical manner as that of PW-1-Ram Paul in respect of the occurrence. During the cross-examination, he stated that his house was situated at a distance of one-two kilometer from the house of the accused.
12. PW-4 Gian Singh though proved the seizure memo, but stated that the disclosure statement was not prepared in his presence and the disclosure statement was already written, when he signed the same and during cross-examination, he stated that the accused had not made any disclosure statement in his presence.
13. PW-5 Vakil Chand was declared hostile and was cross examined by the Public Prosecutor. He stated that the seizure memo in respect of the scissors bears his signatures but in his presence, no scissors were seized. He also identified his signatures on the disclosure memo (ExPW-VC). During cross-examination, he stated that in his presence, the Police was not informed where the scissors were kept and no seizure memo was prepared in his presence.

14. PW-7 Vishwa Mitter, Naib Tehsildar proved the resealing of two packets and certificate (ExPW-VM).
15. PW-8-Dr. Raman Bhagat stated that he examined the victim and observed the injuries suffered by the victim. He proved the injuries suffered by the victim (Ex PW-RB) and he proved the report (ExPW-RB/1) and as per his opinion, injury No. 1 was grievous in nature caused by some sharp object and injuries No. 2 and 3 were simple in nature caused by blunt object.
16. PW-9-Sat Pal (Investigating Officer) stated that after initial investigation, subsequent investigation was conducted and concluded by him. He effected the seizure and obtained the medical report. He also prepared the disclosure statement as well as recovery memo in respect of weapon of offence. Sat Pal (appellant) was arrested on 01.05.2000 and on 04.05.2000, the disclosure statement of the accused/appellant was prepared. Lamberdar and Chowkidar were summoned at the time of writing disclosure statement in the Police Station. The weapon of offence was recovered from Dharampur. On the nishandehi of accused, the recovery was effected from the kitchen of the house of accused Ajeet Kumar.
17. PW-10-Kuldeep Raj (Victim) stated that on 22.04.2000 at 10.30 PM, accused Balwant Raj and Ajeet Kumar along with Kala Ram came to their house and asked him to come to their house as they were to hold a meeting on an important issue. When they went to the house of Ajeet Kumar, Ajeet Kumar asked him in respect of relationship with

their girl. When he denied the relationship, Ajeet Kumar abused him and accused hit his brother and father with sticks. Accused Sat Pal inflicted an injury on his hip on the right side with the scissors. His clothes got blood stained and he fell down. His younger brother went to the Police Station to lodge the report and he did not know what happened afterwards as he had become unconscious. He remained in hospital for 12-13 days. During cross-examination, he stated that the Police had recorded his statement after 3-4 days when he regained his consciousness. He became unconscious when he was hit with the scissors. This is wrong that they had gone to the house of the accused to beat them and when the complainant party was beating the accused, the complainant sustained injuries.

18. PW-11 Jatinder Kapahi stated that he was posted as SDPO Akhnoor and he simply recorded the satisfaction in respect of the conclusion drawn in the challan.
19. This is whole evidence brought on record by the prosecution. The accused including the appellant did not lead any evidence in his defence. From the statement of PW Ram Paul duly corroborated by PW-3 Hans Raj and PW-10 Kuldeep Raj, it is proved that when Kuldeep Raj, Ram Paul and Hans Raj went to the house of the accused-Ajeet Kumar, appellant assaulted the victim Kuldeep Raj with the scissors. Though PWs Ram Paul and Hans Raj have stated that the appellant hit in the stomach of victim Kuldeep Raj with scissors, contradictory to the statement of PW-10 Kuldeep Raj, who

stated that he was hit by the appellant with scissors in his hip, but this Court is of the considered view that the contradiction between the statements of PW Kuldeep Raj vis a vis statements of PW Hans Raj and PW Ram Paul is not of such nature so as to reject the prosecution case, more particularly, when the injury suffered by PW-10 Kuldeep Raj has been duly corroborated by the medical evidence.

20. In view of the above, this Court does not find any perversity in the judgment of conviction recorded by the learned trial court. But equally true is that the victim PW-10 Kuldeep Raj and the appellant have entered into compromise and in respect of that, a compromise deed has been executed between the appellant and the victim-Kuldeep Raj. The compromise deed has been placed on record. As per the compromise entered into between the appellant and the victim Kuldeep Raj, it has been admitted by the victim that both the victim and the appellant reside in the same village and have been living happily together without any animosity and the victim has no grievance left against the appellant. Now their relations are cordial and the victim is also seeking pardon for the appellant as they have no ill will against each other.

21. After the compromise deed was placed on record, the Court directed the appellant and the victim to get their statement recorded before the Registrar Judicial of this court. In their statements, both the appellant as well as the victim have stated that they have entered into compromise vide compromise deed dated 07.12.2023. Further the

victim has stated that he has no grievance against the appellant and now their relations are cordial and in view of their amicable settlement, he has no objection, in case this court allows the appeal and set aside the judgment of conviction dated 04.02.2010 and order of sentence dated 05.02.2010 passed by the learned trial court.

22. This Court is satisfied that the contesting parties have settled their dispute amicably and it is also admitted by the victim that both the appellant and the victim are the residents of the same village and now they are residing happily and peacefully.

23. Offence under section 326 RPC is non compoundable in terms of section 345 Cr.P.C. In **State of Madhya Pradesh v Laxmi Narayan and others, (2019) 5 SCC 688**, the Hon'ble Supreme Court has laid down the following criteria for quashing of the offences, which are non compoundable in nature. They are reproduced as under:

- i) "that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;
- ii) such power is not to be exercised in those prosecutions which involved 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;
- iii) similarly, such power is not to be exercised for the offences under the special statutes like 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) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the

Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC 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 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. 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/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

24. In terms of the aforesaid judgment, even the offence under section 307 IPC can be compounded provided the injuries suffered by the victim do not satisfy the essentials as provided by section 307 IPC.
25. In **Ramawatar v. State of M.P., (2022) 13 SCC 635**, the Hon’ble Supreme Court of India has observed as under:

9. Having heard the learned counsel for the parties at some length, we are of the opinion that two questions fall for our consideration in the present appeal. *First*, whether the jurisdiction of this Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a “non-compoundable” offence? If yes, then whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?

10. So far as the first question is concerned, it would be *ad rem* to out rightly refer to the recent decision of this Court in *Ramgopal v. State of M.P.*, wherein, a two-Judge Bench of

this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J.) was confronted with an identical question. **Answering in the affirmative, it has been clarified that the jurisdiction of a court under Section 320CrPC cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482CrPC. It was further held that the touchstone for exercising the extraordinary powers under Article 142 or Section 482CrPC, would be to do complete justice.** Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers.

26. Since the parties are the residents of same village and have buried the hatchet, therefore, this Court is of the considered view that the offence in the present case, though being non compoundable in nature, can be compounded.
27. Accordingly, the present appeal is allowed. The judgment of conviction dated 04.02.2010 and order of sentence dated 05.02.2010 are set aside. Bail bonds as well as personal bond of the appellant are discharged. The charge-sheet stands settled and compounded.
28. Record of the trial court be returned back.
29. In terms of aforesaid judgment, the accompanied ROB KAR, whereby a show cause notice had been issued to the surety of the appellant by this Court, stands closed/dropped.

(RAJNESH OSWAL)
JUDGE

Jammu
21.12.2023
Rakesh

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No