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NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1341 of 1999**

1. Bhairo @ Yogendra S/o Khushi Ram Jaiswal, occupation Conductor at Sharma Bus, resident of Sarwani, Thana Kharsiya
2. Gandhi Ram S/o Vedram Rathore, Occupation driver, resident of Bardwara, Thana Baradwar, District Bilaspur (MP)
3. Sita Ram S/o Chhotka Vishwakarma, Occupation Hotel, resident of Khamhar, Thana Dharamjaigarh, District Raigarh (MP)

---- Appellants**Versus**

State of Madhya Pradesh through District Magistrate, Raigarh

---- Respondent

For Appellants

Shri Rajendra Tripathi, Advocate

For Respondent/State

Shri U. K. S. Chandel, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26/07/2016**

The instant appeal has been preferred assailing the judgment of conviction dated 29.04.1999 passed in Sessions Trial No. 222/97 by the Sessions Judge, Raigarh whereby the appellants have been convicted for the offence under Section 326/34 and sentenced to undergo RI for three years.

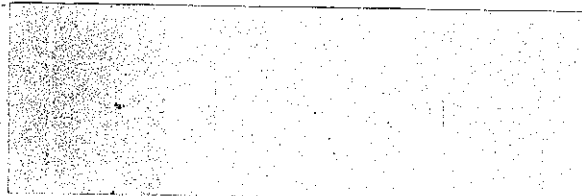
2. Counsel for the appellants submits that from the evidence of the doctor PW-6 it clearly reflects that the case under Section 326 is not made out rather at best it would be a case which may fall within the ambit of Section 325 of IPC. He refers to the medical report Ex. P-10 which shows that except for the fracture of collar bone and left hand, all other injuries were simple in nature. He further submits that the dispute also arose because of the trivial issue where the complainant who is a conductor had stopped the bus at a wrong place on account of which the dispute arose between the parties.

3. From the evidence it is evident that there was no intention on the part of the appellants to take on a fight with the injured neither was there any premeditation or preplanned assembly of the accused persons with a clear intention and motive of assaulting him. Rather it is a case which arose on account of the wrong parking of the bus in which the complainant was the conductor and heat of passion and the arguments between the parties, the fight arose and the appellants are said to have on the spur of moment assaulted the complainant resulting in injuries. The reason for convicting the appellants for offence under Section 326 of IPC appears to be the two fractures but both these fractures admittedly are not serious in nature and were also on the non-vital parts of the body. Thus, in the opinion of this Court, the conviction of the appellants under the provisions of Section 326/34 does not seem to be proper, legal and justified and at best, it would fall within the purview of an offence under Section 325 of IPC.

4. The impugned judgment of the Court below thus deserves to be and is accordingly modified to the extent of converting the conviction of the appellants from Section 326/34 IPC to one under Section 325/34 of IPC.

5. Counsel for the appellants submits that pending the appeal before this Court, the parties have settled the dispute out of Court and in the process, the complainant does not want to pursue with the case any further and also he does not have any intention for getting the appellants further being sent to jail in the light of the order of conviction. In this regard, the complainant has also filed an affidavit to the extent that he does not intent to prosecute the appellants any further.

6. Complainant Anil Choubey is present before this Court along with his advocate Shri S. R. J. Jaiswal.



7. On a specific query being put to the complainant by the Court he makes a categorical statement that they have settled the dispute amicably and does not want the applicants to be sent to jail.

8. State counsel also on due consideration of the facts submits that since the complainant himself is ready for settlement, the State does not have any objection in case the matter is compounded.

9. In view of the categorical statement made by the complainant, this Court is of the opinion that once when the complainant and the accused have settled their matter and buried the dispute and differences, it would be an important consideration for the High Court while exercising the powers under Section 482 Cr.P.C. to compound the offence. The opinion of this Court stands fortified from the judgment of the Supreme Court in the case of Gian Singh Vs. State of Punjab¹ and Another and also in the case of Narinder Singh and Others Vs. State of Punjab and Another².

10. In view of the statement made by the complainant and keeping in view the law laid down by the Supreme Court in the Case of B. S. Joshi and Others Vs. State of Haryana and Another³ and also in the case of Gain Singh (Supra) and Narinder Singh (Supra) and the State also not opposing the same, this Court is of the opinion that it is a fit case where the parties can be permitted to compound the offence.

11. Accordingly, I.A. Nos. 1/16 & 2/16 are allowed and the parties are permitted to compromise the offence. Consequently, the appellants stand acquitted of the charge under Section 325/34 of IPC.

12. The present appeal accordingly stands disposed of.

Sd/-

(P. Sam Koshy)
JUDGE

1 2012 (10) SCC 303

2 2014 (6) SCC 466

3 2003 (4) SCC 675