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

% *Date of Decision : 5th February, 2016*

+ CRL.A. 1097/2015, CrI. M. (B) 7987/2015, CrI. M.A. 18363/2015 & 18881/2015

NITESH @ ROCKY Appellant

Through: Mr.Ajay M.Lal, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with Insp. Indraj Singh, PS
Adarsh Nagar.

AND

+ CRL.A. 1108/2015, CrI. M. (B)8019/2015, CrI. M.A.18367/2015 & 18873/2015

SACHIN Appellant

Through: Mr.Ajay M.Lal, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with Insp. Indraj Singh, PS
Adarsh Nagar.

AND

+ CRL.A. 1109/2015, CrI. M (B) 8020/2015, CrI. M.A. 18871/2015 & 18365/2015

KUNAL @ ASHISH Appellant

Through: Mr.Ajay M.Lal, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through: Mr.Kewal Singh Ahuja, APP for the
State with Insp. Indraj Singh, PS
Adarsh Nagar.

PRATIBHA RANI, J. (Oral)

1. These appeals have been preferred by the appellants Nitesh @ Rocky (in CrI.A. No.1097/2015), Sachin (in CrI.A. No.1108/2015) and Kunal @ Ashish (in CrI.A. No.1109/2015) against the judgment and order on sentence dated 13.08.2015 & 28.08.2015 respectively whereby the learned ASJ convicted the appellants for committing the offences punishable under Sections 307/308/34 IPC and sentenced to undergo RI for five years with fine of ₹5000/- each and in default of payment of fine to undergo RI for six months for the offence punishable under Section 307/34 IPC and further to undergo RI for four years with fine of ₹3000/- each and in default of payment of fine, to undergo RI for four months. Both the sentences were ordered to run concurrently

2. Briefly stating, the facts of the present case are that on 15.05.2008 DD No.41-A was recorded at PS Adarsh Nagar which was assigned to SI Ram Kanwar who alongwith HC Rajesh, HC Ahok and Ct.Suresh Kumar went to the spot i.e. MCD Colony, Mukandpur Road At the spot, SI Ram Kanwar came to know that injured person have been removed to BJRM Hospital. He alongwith his staff reached BJRM Hospital and collected the MLCs of injured Suman, Ramesh Kumar Sharma and Abhishek. While injured Suman was declared unfit for statement, other two injured namely Ramesh Kumar Sharma and Abhishek were declared fit for statement.

3. SI Ram Kanwar recorded the statement of Abhishek who stated that on 15.05.2008 at about 9.30 pm he was standing in front of shop situated at MCD Colony, Mukundpur Road. At that time three boys namely, Kunal, Sachin and Nitesh @ Rocky i.e. the appellants herein came there. While Kunal was having iron rods the other two boys were armed with Dandas. At the instigation of Kunal, all of them over powered him and started beating

him with fist and kick blows. In the meantime, Ramesh Kumar Sharma and Suman, who were going towards MCD Colony, came there and asked accused persons as to why they were beating him and tried to save him. At that time all the appellants left him and started beating Ramesh with iron rods and dandas. While appellant Kunal hit iron rod on the knee of Ramesh, appellant Nitesh hit on the head of Ramesh with danda and appellant Sachin gave danda blow on the leg and other parts of his body. When Suman tried to save himself by leaning towards his back, danda given by appellant Sachin hit on the head of appellant Nitesh. When appellant Sachin again tried to give danda blow on the head of Suman he leaned forward due to which the danda blow hit on the head of Roshan Lal father of appellant Sachin. In the meantime appellant Kunal threw the iron rod and took Ustra from the pocket of his pant and inflicted injury on the neck of Suman with Ustra. On hearing noise, the residents of the locality came there. While appellant Kunal and Sachin managed to flee, appellant Nitesh could not flee due to injuries received by him in the incident. The matter was reported to the police.

4. On the basis of above statement FIR No.113/2008, under Section 307/325/34 IPC was registered at PS Adarsh Nagar. During investigation other two appellants Kunal and Nitesh were also apprehended. After completion of the investigation charge sheet was filed against all the appellants for the offences complained of.

5. On the basis of material placed on record by the prosecution, the appellants were charged on 11.11.2008 for having committed the offences punishable under Sections 307/325/34 IPC. However, amended charge has been framed against the appellants on 19.03.2014 for having committing the offences punishable under Sections 307/308/34 IPC. The appellants pleaded

not guilty to the charges framed and claimed trial.

6. The prosecution in order to prove its case examined as many as 17 witnesses and after concluding the trial, the learned Addl. Sessions Judge, New Delhi held appellants guilty of the charges and sentenced them in the manner as aforesaid. Feeling aggrieved by their conviction and sentenced awarded to them, the appellants preferred these appeals.

7. Today all the three appellants have been produced from J/C pursuant to the production warrants issued vide order dated 21.01.2016. All the three injured namely Suman, Ramesh Kumar Sharma and Abhishek are also present in person.

8. Learned counsel for the appellants, on instructions, submits that the appellants are not challenging their conviction in this case and only pray for leniency on the point of sentence. Learned counsel for the appellants further submits that the appellants and injured persons are close neighbours and with the intervention of respectable persons of the locality, resolved the dispute without any fear, influence or coercion from any corner. Learned counsel for the appellants further submits that the appellants have also compensated the injured persons by paying ₹10,000/- to Abhishek, ₹60,000/- to Ramesh Kumar Sharma and ₹75,000/- to Suman for the injuries suffered by them in the incident. Learned counsel for the appellants prays that in the given circumstances, since the appellants are not challenging their conviction and already compensated the injured persons, a lenient view may be taken on the point of sentence.

9. Injured persons namely Suman, Ramesh Kumar and Abhishek, who are present in person, submit that they have resolved the dispute with the appellants with the intervention of respectable persons of the locality and are left with no grievance whatsoever against the appellants. They further

submit that they do not even want to accept the money given to them as compensation by the appellants and ready to return the same even today if the Court directs just to show that the settlement with the appellants is not due to any monetary consideration or under any threat, fear or coercion.

10. Leaned APP for State has submitted that since the parties have compounded the matter and injured persons have also been compensated by the appellants, appropriate orders may be passed in the matter in view of the judgment of Apex Court in ***Gulab Das & Ors. vs. State of M.P. AIR 2013 Supreme Court 888.***

11. In the case ***Gulab Das & Ors. Vs. State of M.P.*** (Supra), the appellant No.1 Gulab Das, Appellant No.2 Chetan were sentenced to undergo imprisonment for a period of one month under Section 323 IPC. However, appellant No.2 Chetan was further sentenced to undergo rigorous imprisonment for a period of three years and a fine of Rs.500/- under Section 307 IPC. All the appellants challenged their conviction before the High Court of Madhya Pradesh at Jabalpur which failed and consequently the matter reached the Supreme Court as SLP was filed by the appellants.

12. During the pendency of appeal before the Supreme Court, the appellants and the complainant arrived at an amicable settlement and prayed for compounding of the offence. While disposing of the appeal, the Apex Court, though declined the prayer for compromise and maintained the conviction of the appellants, reduced the sentence to the period already undergone by the appellants in view of compromise arrived at between the parties. The legal position in such a situation has been discussed in paras 7, 8 and 9 of the said decision and reproduced as under:-

“7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer

for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Cr.P.C. cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in Ram Lal and Anr. vs. State of J & K (1999) 2 SCC 213: (AIR 1999 SC 895), and Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667: (AIR 2009 SC 675). We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos. 2 and 3 stand convicted.

8. Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the quantum of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant Nos.2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross-case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. Moreso, the appellants have already served substantial part of the sentence awarded to them.

9. In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them.”

13. In the case in hand also, the appellants were convicted and sentenced by the Trial Court vide the impugned judgment dated 13.08.2015 and order on sentence dated 28.08.2015 for the offence under Section 307/308/34 IPC. The appellants and the injured persons are stated to be neighbours and residing in the same locality.

14. As per nominal roll, the appellant Nitesh @ Rocky has spent seven months and three days in judicial custody in this case as on 17.12.2015 and he has earned remission of fifteen days.

15. Perusal of nominal roll of appellant Sachin reveals that he has spent six months and twenty days in judicial custody in this case as on 14.12.2015 and he has earned remission of fifteen days.

16. As per nominal roll, the appellant Kunal @ Ashish has spent six months and twenty six days in judicial custody in this case as on 07.12.2015 and he has earned remission of fifteen days.

17. Accordingly, while upholding the conviction of the appellants, the substantive sentence awarded to them is reduced to one year. The sentence of fine amount of Rs.8,000/- each as imposed by the learned Trial Court is maintained. The impugned order on sentence dated 28.08.2015 passed by the learned Trial Court is modified and these appeals are allowed to the aforesaid extent.

18. CrI.A.No.1097, 1108 & 1109 of 2015 stand disposed of accordingly.

19. All pending applications also stand disposed of.

20. LCR be sent back alongwith copy of this order.

21. A copy of the order be sent to learned Trial Court as well as to the Jail Superintendent for necessary compliance.
22. As prayed copy of the order be given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

FEBRUARY 05, 2016
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