

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.219 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

- =====
1. Prabhu Mahto, son of Parmeshwar Mahto
 2. Hari Shankar Mahto
 3. Jai Shankar Mahto
 4. Satyendra Mahto @ Satyendra Kr. Mahto, all sons of Prabhu Mahto, all residents of village Gadhia (Beshanpar Birauli), P.S. Pusa, District Samastipur
- Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. S.N.P. Sinha, Sr.Advocate with
M/S. J.N.Sinha, Rohit Kumar, Rashmi
Bharti, Advocates
For the State : Mr. Anil Kumar, APP
For the Informant : Mr. Sushil Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 13-04-2017

This appeal is directed against the judgment and order dated 15.4.2002 passed by Shri Sheo Murat Ram, 5th Additional Sessions Judge, Samastipur in Sessions Trial No. 165 of 1998 by which he has convicted the appellants under Sections 324/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three years under Sections 324/34 IPC and by the same judgment he has acquitted the appellants under Sections 307/34 IPC having found them not guilty for the said charge.

2. One fardbeyan of Uma Kant Singh (P.W.6) has been recorded by ASI, Sheo Shankar Sahu (P.W.7) and according to which prosecution case, in short, is that on 7.7.1996 at about 6 A.M. the informant had gone to attend the call of nature in the field and while he was returning on way near the boring of the accused he met with



accused appellant No.1 Prabhu Mahto and asked him for construction of wall around the ditch dug by him and later on scuffle took place, on which appellants Hari Shankar Mahto, Jai Shankar Mahto and Satyendra Mahto armed with farsa, danta and rod came there and accused Prabhu Mahto had taken farsa from the hands of accused Hari Shankar and gave farsa blow on the head of the informant from behind, due to which he sustained head injury and accused Jai Shankar hurled his Lota blow on his mouth, as a result of which his teeth were broken. Further prosecution case is that when Deokant Singh rushed to the spot to rescue his brother (informant), accused Satyendra Mahto gave rod blow on his leg and he sustained injury and when witnesses arrived there the accused persons fled away.

3. On the basis of aforesaid fardbeyan Pusa P.S.Case No.223 of 1996 was instituted against the accused appellants under Sections 447, 341, 323, 324, 325 and 504/34 IPC and police after investigation submitted charge-sheet against the appellants under the aforesaid sections as well as under Section 307 IPC.

4. Cognizance of the offence was taken against the appellants and later on the case was committed to the court of sessions, which ultimately came to the file of Sri Shio Murat Ram, 5th Additional Sessions Judge, Samastipur, who by his judgment and order has convicted and sentenced the appellants, as stated above.

5. Aggrieved by the said judgment and order the present appeal has been filed.



6. In course of argument, learned counsel for the appellants has filed a petition under Section 320 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') seeking leave of the Court to accord permission of compromise and a compromise petition has also been filed, which are I.A. No. 777 of 2017 and I.A.No. 778 of 2017 respectively. It has further been submitted that the parties had compromised the matter and entered into a settlement and, as such, application had been filed for compounding the offence punishable under Section 324 IPC with the leave of the Court and prayed for an appropriate order.

7. It has further been submitted on behalf of the appellants that, as a matter of fact, there is a case and counter case between the parties and after trial the appellants having been convicted have filed the present appeal. On the other hand, the informant and others, who were accused in counter case being G.R.No. 974 of 1996, Trial No. 415 of 2003 have been convicted by the judgment and order dated 20.2.2003 passed by learned Judicial Magistrate, 2nd Class, Samastipur and they were found guilty under Sections 341, 323 and 504 IPC and petitioner No.2 Uma Kant Singh was held guilty for charges under Sections 341 and 324 IPC and five other co-accused persons were acquitted for the charges framed against them and they were sentenced to undergo Simple Imprisonment for three months for the conviction under Section 341 IPC, Simple imprisonment for six months for conviction under



Section 323 IPC and Simple Imprisonment for six months for conviction under Section 504 IPC and petitioner No.2 Uma Kant Singh was sentenced to undergo Simple Imprisonment for a period of three months for the conviction under Section 341 and Simple Imprisonment for one year for conviction under Section 324 IPC and all the sentences were directed to run concurrently and the petitioners being aggrieved by the aforesaid judgment of conviction and order of sentence passed by the learned trial court, preferred Cr.Appeal No. 24 of 2003, which was dismissed with certain observations and modifications in the judgment of conviction and order of sentence by the judgment dated 4.8.2008 passed by learned 1st Additional Sessions Judge, Samastipur, against which the petitioners have filed Cr.Revision No. 1030 of 2008 before this Court and during the pendency of the revision application the petitioners of the revision application as well as the informant, who is one of the appellants in this appeal, have entered into a compromise and they have amicably resolved the dispute among them and in view of the aforesaid compromise the petitioners filed I.A.No. 1591 of 2012 and the same was allowed and the informant was permitted to be impleaded as opposite party No.2 in the main criminal revision application. Thereafter this Court after considering the entire matters allowed the I.A.No. 1592 of 2012 filed on behalf of the informant seeking permission of this Court to enter into compromise with the accused persons was allowed and permission was accorded to compromise the



offence under Section 324 IPC. Consequently I.A.No. 1593 of 2012 filed on behalf of the petitioners of that case and opposite party No.2, i.e., informant of that case, whereby they have entered into compromise with respect to offences in question, was allowed in exercise of powers under Section 320(6) of the Code. It has been submitted on behalf of the appellants that the aforesaid fact will appear from copy of the order passed in Cr.Revision No. 1030 of 2008, which is Annexure-1 to the petition and in the aforesaid background it has been submitted that at that time compromise petition could not be filed in the present appeal but now two petitions, as stated above, have been filed, one for granting leave of the Court to compromise and another for grant of compromise signed by the appellants as well as one of the injured. However, in the meantime, the informant of the present case has died and this informant of the present case was petitioner No.2 in criminal revision application and it has been submitted that this Hon'ble Court can take judicial notice of the fact that in interlocutory application filed by Uma Kant Singh and other petitioner in criminal revision application being I.A. No. 1592 of 2012 and I.A. 1593 of 2012, there is averment that the parties had compromised that case and in that case appellant No.1 was opposite party No.2 and both the parties have appeared and the application filed on the basis of compromise was allowed.

8. Learned counsel appearing on behalf of the brother of the informant, who is also one of the injured in the present case, is



also present.

9. From perusal of the I.A.No. 777 of 2017 it appears that petition for grant of leave has been filed under Section 320 of the Code on behalf of brother of the informant, who was injured, stating that the informant died on 26.1.2013 and also stating that there was a counter case in which his brother Uma Kant Singh and petitioner were convicted, which ended in compromise vide Annexure-1 of compromise petition and good relationship has been restored between the parties and, as such, he prays for leave of the Court to accord permission to compromise the case and further a compromise petition, i.e., I.A.No. 778 of 2017, has been filed signed by the appellants as well as by one of the injured as the other injured, i.e., informant died and also signed by the counsel for the injured Deo Kant Singh, Sri Sushil Kumar Jha, stating that the well wishers of the parties intervened and got the dispute settled outside the Court and on account of compromise good feelings have been restored between the appellants, the injured and as such they do not want to proceed any longer in this case.

10. So far Code of Criminal Procedure is concerned, Section 320 deals with offences which are compoundable, either by the parties without the leave of the court or by the parties but only with the leave of the court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the court, while sub-section (2) of the said section specifies the offences which



are compoundable with the leave of the court. Sub-section (9) of Section 320 provides that no offence shall be compounded except as provided by this section. It is thus clear that offences not referred to in sub-sections (1) and (2) of Section 320 and not included in the table are not compoundable. Similarly, offences punishable under laws other than the Penal Code also cannot be compounded taking into advantage of this section.

11. Sub-section (8) of Section 320 of the Code expressly enacts that where the composition of an offence under this section is recorded by the court, it shall have effect of an acquittal of the accused with whom the offence has been compounded and as per table provided under Section 320 of the Code the offence under Section 324 IPC was compounded by a person to whom hurt is caused.

12. In the present case, two persons had received injuries, one is the informant Uma Kant Singh and another is Dev Kant Singh, brother of informant. One petition for grant of leave of the Court to compromise the case and other petition for compromise have been filed and signed by the brother of the informant. During the pendency of appeal, the informant Uma Kant Singh died but there are other materials available on the record and there was a counter case also and in counter case both the parties have compromised and they have settled the dispute, which will appear from Annexure-1 to I.A.No.778 of 2017, on the basis of which criminal revision pending against the



informant and others was allowed. Considering the above facts as also considering the fact that cordial relationship has been prevailed between the parties, this Court, taking judicial notice of the fact, may grant leave to the brother of the informant for compromise in this case.

13. No doubt, that after coming into force the Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the above entry has been deleted and that means that an offence voluntarily causing hurt by dangerous weapons or means punishable under Section 324 IPC is no more compoundable. However, the Amendment Act of 2005 came into force from 23.6.2006, whereas in the present case occurrence is of the year 1996. In view of the above fact, the opinion of this Court is that Act 25 of 2005 Act has no application in the facts and circumstances of the case. Hon'ble Apex Court also in the case of **Manoj and Another vs. State of Madhya Pradesh : [(2008) 3 SCC (Cri.) 699]** and **Mohd. Abdul Sufan Laskar and Others vs. State of Assam : [(2008) 3 SCC (Cri.) 770]** where similar issues came up for consideration before the Court, after considering the aforesaid aspects of the matter, allowed the petition for compromise on the ground that occurrence had taken place prior to coming into force of the Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005).

14. Considering the discussions made above, the petition for leave of the Court to accord permission to compound the case, being I.A. No. 777 of 2017 is allowed and in view of I.A. No. 778 of



2017, which shows that parties have compromised the case and also considering the judgment passed in Cr.Revision No. 1030 of 2008 by which the case was finally disposed of on the basis of compromise held between the parties, I.A. No. 777 of 2017 is allowed and I.A. No. 778 of 2017 also stands disposed of. Since the matter has been compounded by the compromise between the parties, hence this appeal is allowed and the conviction and sentence of the appellants passed by learned trial court are set aside.

15. Accordingly, the appellants, who are on bail, are discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
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