

SURINDRA NATH MOHANTHY AND ANR.

A

v.

STATE OF ORISSA

MAY 4, 1999

[K.T. THOMAS, M.B. SHAH AND D.P. MOHAPATRA, JJ.]

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*Criminal Procedure Code, 1973 :*

*Sections 320 sub-section (1), (2) & (9)—Compounding of non-compoundable offences—Appellants convicted under Sections 307, 326, 325, 324 & 323 read with Section 34, IPC by the trial court—On revision, High Court altered the conviction under section 307 but confirmed the convictions under other sections—Whether conviction could be compounded by the High Court—Held, no—However, in view of the fact that parties have settled their disputes and 10 years have elapsed from the date of the incident and that the appellants have undergone 3 months' imprisonment, sentence reduced to the period already undergone, with a fine of Rs. 5000 on each of the accused—Compensation to the injured—Directed to be paid from out of the fine amount realised from the accused.*

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The appellants were convicted and sentenced under Sections 307, 326, 325, 324 & 323 read with Section 34, IPC and were sentenced to 5 years rigorous imprisonment and fine. On revision, the High Court came to the conclusion that from the nature and extent of the injuries sustained by the injured and also from the manner in which the car struck against the injured, it was difficult to hold that the intention of the accused was to kill the injured and, therefore, it was hazardous to uphold their conviction under Section 307 IPC. High Court altered the conviction of the appellant under section 326, 325, 324 & 323 read with Section 34 IPC. Hence this appeal.

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It was contended by the appellants that as the disputes was amicably settled and the matter was compromised, the High Court ought to have granted permission to compound the offence and ought not to have convicted the appellants and imposed the sentenced.

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Partly allowing the appeal, this Court

HELD : 1. For compounding of the offences punishable under the Indian Penal Code, complete scheme is provided under Section 320 of the

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A Code of Criminal Procedure, 1973. Sub-section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column No. 3 of the said table. Further, Sub-section (2) provides that, the offences mentioned in the table could be compounded by the victim with permission of the Court. As against this, Sub-section (9) specifically provides that "no offence shall be compounded except as provided by this Section". In view of the aforesaid legislative mandate, only the offences which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code could not be compounded. [1008-A-C]

C *Ram Lal v. State of J & K*, JT (1999) 1 SC 147, relied on.

*Ram Pujan & Ors. v. State of Uttar Pradesh*, [1973] 2 SCC 456, distinguished.

D *Mahesh Chand & Anr. v. State of Rajasthan*, JT (1988) 1 SC 618 and *Y. Suresh Babu v. State of A.P. Anr.*, JT (1987) 2 SC 361, overruled.

E 2. Considering the fact that parties have settled their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that appellants have already undergone 3 months imprisonment as per the sentence imposed on them, ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5000 on each of the accused under Section 326 read with section 34 IPC. In default of payment of fine, the appellant shall undergo simple imprisonment for a further period of 3 months. Out of the fine amount, if realised, a sum of Rs. 9000 also be paid to the injured as compensation. [1009-A-C]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 497-98 of 1999.

G From the Judgment and Order dated 5,9,1997 of the Orissa High Court in Crl. R. No. 436 of 1994.

Vijay Hansaria and Sunil Jain for M/s Jain Hansaria & Co. for the Appellants.

Jana Kalyan Das for the Respondent.

H The Judgment of the Court was delivered by

SHAH, J. Leave granted.

These appeals are filed against the judgment and order dated 5th September, 1997 and 10th November, 1997 passed by the High Court of Orissa at Cuttack in Criminal Revision No 436 of 1994 and Miscellaneous Case No. 521 of 1997 whereby Revision Petition against the conviction order and the application for correction, alteration and for compounding offence filed by the appellants were rejected.

The appellants were convicted and sentenced under Section 307, 326, 325, 324 & 323 read with Section 34. I.P.C. and sentenced to 5 years R.I. and fine of Rs. 200 in default of payment of which to undergo R.I. for one month. That Order was challenged before the High Court by filing Criminal Revision No. 436 of 1994. After considering the entire evidence on record, the Court held that from the nature and extent of the injuries sustained by the injured, and also from the manner in which the car struck against the injured, it was difficult to come to a conclusion that the intention of the accused was to kill the injured and, therefore, it would be hazardous to uphold their conviction under Section 307 I.P.C. After considering the injuries casued to the witness, the High Court altered the conviction of the appellants under Section 326,325, 324 & 323 read with Section 34 I.P.C. and having regard to the facts and circumstances of the case and the affidavit of the witness produced on record, the Court imposed sentence of six month's R.I and fine of Rs.1,000 in default of payment of which to undergo R.I for further three months for the offence under Section 326 IPC and no separate sentence was imposed on the other counts of offences. Against that order, these appeals are filed by special leave.

It is vehemently contended by the learnd Counsel for the appellants that as the dispute was amicably settled and the matter was compromised, the High Court ought to have granted permission to compound the offences and ought not to have convicted the appellants and imposed the sentence. For this purpose, reliance is placed upon the decisions of this Court in *Ram Pujan and Others v. State of Uttar Pradesh*, [1973] SCC 456 and *Mahesh Chand and Anr. v. State of Rajasthan JT*, [1988] 1 SCC 618. As against this, learned Counsel for the respondent submitted that the offence under Section 326 is not compoundable and the High Court has rightly rejected the application for compounding the same. He, for this purpose, relied upon the Judgment of this Court in *Ram Lal and Anr. v. State of J & K*, reported in JT (1999) 1 SC 147 wherein after referring to Section 320 (9) of the Code of Criminal Procedure, the Court observed that the decision in *Mahesh Chand* (supra) was rendered

A perincuriam.

In our view, submission of the learned Counsel for the respondent requires to be accepted. For compounding of the offences punishable under the Indian Penal Code, complete scheme is provided under Section 320 of the Code of Criminal Procedure, 1973. Sub-Section (1) of Section 320 provides that the offences mentioned in the table provided thereunder can be compounded by the persons mentioned in Column No. 3 of the said table. Further sub-Section (2) provides that, the offences mentioned in the table could be compounded by the victim with the permission of the Court. As against this, sub-Section (9) specifically provides that "no offence shall be compounded except as provided by this Section." In view of the aforesaid legislative mandate, only the offences which are covered by table 1 or 2 as stated above can be compounded and the rest of the offences punishable under Indian Penal Code could not be compounded.

Further, decision in Ram Puja's case (supra) does not advance the contention raised by the appellants. In the said case, the Court held that major offences for which accused have been convicted were no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. In Ram Lal (supra), the Court referred to the decision of this Court in *Y. Suresh Babu v. State of A.P. & Anr.*, (1987) 2 JT 361 and to the following observations made by the Supreme Court in *Mahesh Chand v. State of Rajasthan*, [1990] Suppl. SCC 631 and held as under :-

"We gave our anxious consideration to the case and also the plea put forward for seeking permission to compound the offence. After examining the nature of the case and circumstances under which the offence was committed, it may be proper that the trial court shall permit them to compound the offence."

In the case of *Y. Suresh Babu* the Court has specifically observed that the said case "shall not be treated as a precedent." The aforesaid two decisions are based on facts and in any set of circumstances,, they can be treated as perincuriam as pointed attention of the court to sub-section (9) of section 320 was not drawn. Hence, the High Court rightly refused to grant permission to compound the offence punishable under Section 326.

We reiterate that the course adopted in *Ram Puja v. State of U.P. & Others*, and *Mahesh Chand & Anr. v. State of Rajasthan*, (supra) was not in accordance with law. However, considering the fact the parties have settled

their dispute outside the Court and the fact that 10 years have elapsed from the date of the incident and the further fact that appellants have already undergone 3 months imprisonment as per the sentence imposed on them, we think that ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone besides imposing a fine of Rs. 5000 on each of the accused under Section 326 read with section 34 I.P.C. We reduce the sentence as indicated above and direct that in default of payment of fine, the appellant concerned shall undergo simple imprisonment for a further period of three months. We also refrain from imposing any separate sentence on the other counts of offences. Out of the fine amount, if realised, a sum of Rs. 9,000 also be paid to the injured as compensation.

The Appeals stand disposed of accordingly.

R.K.S.

Appeals disposed.