

Rohtas and ors. Vs. State of Delhi

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Court : Delhi

Decided On : Jan-06-2005

Reported in : 2005CriLJ805; 116(2005)DLT612; 2005(79)DRJ356

Judge : Manmohan Sarin, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307 and 326; Code of Criminal Procedure (CrPC) - Sections 320, 389 and 482

Appeal No. : Crl. Appeal No. 401/1999

Appellant : Rohtas and ors.

Respondent : State of Delhi

Advocate for Def. : Santosh Kohli, APP

Advocate for Pet/Ap. : K.B. Andley, Sr. Adv,; M.L. Yadav and; Parminder Singh,

Judgement :

Manmohan Sarin, J.

1. By this common order, I am deciding the prayer made for permitting the disposal of the appeals in terms of settlement reached between the parties. The appellants in Crl.Appeal No. 401/1999 are Rohtas, Narender Kumar and Ram Kumar, while appellant in Crl.Appeal No. 415/1999 is Mahesh Kumar.

2. Vide judgment dated 9th August, 1999, all the four appellants namely Mahesh Kumar, Rohtas, Narender Kumar, and Ram Kumar prosecuted under Section 307 read with section 34 IPC, were sentenced to RI for a period of 10 years for offence under section 307/34 IPC and a fine of Rs. 5000/- each and in default, SI for a period of three months. Out of the fine, sum of Rs. 15000/- to be paid as compensation to injured Balraj after expiry of the period of limitation for filing an appeal.

3. Appeals were admitted and notices in applications were issued. Substantive sentences awarded to the appellants under Section 389 Cr.P.C were suspended on their furnishing bail of Rs. 10.000/- each by personal bond with one solvent surety each in the like amount, vide order dated 29th September, 1999. It is stated that appellants have duly deposited the fine.

4. Mr.K.B.Andley, learned counsel appearing on behalf of the appellants submitted that these are fit cases where the court should permit compounding of the offences in view of settlement reached between the parties. The injured Balraj S/o Sh.Balbir Singh, who had suffered grievous injuries, along with his counsel Sh.O.P.Sharma was present. He confirms that the matter has been compromised and he has been compensated. As such, he did not pursue the suit for damages filed in the trial court. He also joins in the prayer for permission to compound the offences.

5. Mr.Andley in support of his submission for permitting compounding of the offence, submits that even though the appellants have a good case on merits and there are several contradictions in the prosecution witnesses, permission for compounding is being sought in view of settlement reached between the appellants and the injured who has been duly and adequately compensated. The parties who belong to the same village and community are living peacefully since then. It is urged that the Trial Judge had ignored the DD entry No. 34. As per the said entry, Sudan Pandit had driven his truck over the injured at the venue of Holi celebrations. The said Sudan Pandit had not been arrayed as an accused. Prosecution case was that appellant Mahesh had driven the half body truck and hit complainant Balraj who suffered grievous and multiple injuries. Parties were

having some dispute regarding trespass over agricultural land. The village panchayat was seized of the matter and with its intervention a compromise had been reached between the complainant and the accused. The complainant Balraj had also filed a suit for damages claiming compensation of Rs. 5 lakh. Statement of the complainant/injured had been recorded in the suit to the effect that the incident had taken place on the day of Holi and a truck driven in rash and negligent manner had hit the complainant. Complainant deposed in the suit that he had not seen the driver and others who had run away from the spot taking benefit of darkness. Mr.Andley submits that pursuant to the decision reached in the village panchayat, the complainant had been adequately compensated, who did not pursue the suit after recording of the statement. He let the suit be dismissed in default.

6. Mr. Andley urges that the instant case is over ten years old and the parties have amicably settled their disputes. They were desirous of living amicably in the same village in harmony. He, therefore, makes an impassioned plea for compounding being allowed, since it would subserve the interest of justice.

7. Having noticed the factual matrix, let us examine the legal position in the light of the authorities cited by the counsel.

8. Reliance was placed on the decision of the Supreme Court in Y. Suresh Babu v. State of A.P. and Anr. J.T. 1987 (92) SC 361 . The court granted permission as a special case to the parties to compound the offences under Section 326 of the Indian Penal Code which is an offence of causing grievous hurt. In this case, the accused had been sentenced to imprisonment of one year. The Court noted that on account of the intervention of the well wishers, the parties who were from same locality have reconciled their differences to preserve amity and good relations. The Supreme Court directed payment of Rs. 10,000/- as compensation. Upon deposit of compensation, sentence of the appellants under Section 326 would stand set aside. It would be seen that the Court granted permission taking into account the settlement arrived at between the parties on account of well wishers. It being noted that parties were from the same locality, who had resolved their differences to preserve amity and good relations. Mr.Andley submits that the cited case has

several common features.

Reliance was next placed on Mahesh Chand and Anr. v. State of Rajasthan, : 1988 CriLJ121 . It was a case where the accused had been acquitted by the trial court, but convicted in appeal by the High Court as offence under Section 307 IPC was not a compoundable offence. One of the accused was a practicing lawyer. The Court noted that there was also a counter case filed, arising out of the same transaction which had been compromised. The Court following Y.Suresh Babu (supra) directed the Trial Judge to accord permission to compound the offence and record was transmitted to the trial court for the said purpose. Reliance was also placed on a Division Bench decision of this Court in Dault Zia v. Govt. N.C.T. of Delhi and Ors., : 74(1998)DLT259 . This was a case where FIR had been registered under Section 307 IPC, an offence which was not compoundable. The complainant in this case had been assaulted by the accused with a knife resulting in injuries. The complainant and the accused hailed from Afghanistan. With the intervention of common friends and relatives, differences had been resolved and parties were not desirous of pursuing the complaint. The Division Bench noting the decision of the Supreme Court in Mahesh Chand (supra) and Y.Suresh Babu (supra) and the factum of parties having amicably settled their differences and wanted to live in peace, quashed the proceedings pending in the court arising out of FIR for offences under Section 307.

Lastly, reliance was placed on the decision of the Supreme Court in B.S. Joshi and Ors. v. State of Haryana and Anr., 2003 (1) JCC 541. The Supreme Court reviewed the exercise of discretion under Section 482 Cr.P.C. in granting permission for compounding offences, not compoundable under Section 320 Cr.P.C. The Supreme Court held as under:

'In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.'

9. The common thread which permeates in the cited decisions is the factum of settlement reached between the parties and their living in harmony. This of course

is a relevant consideration which was noticed by the Supreme Court in permitting the compounding of offences in special circumstances. Another feature which has been taken notice of is that other litigation between the parties was also settled. In *Daulat Zia v. Govt. of NCT of Delhi and Ors (Supra)*, a case was registered under section 307 IPC and it was a case of assault by knife. The complainant and the accused were Afghan nationals and the incident had occurred following burning of a car and the quarrel had ensued in which the accused-appellant took out a knife and assaulted the complainants. It was not a case of pre-meditated or planned action.

10. In the present case, allegations are of such a serious nature and the entire conduct attributable to the accused is so abhorring that I have not been able to persuade myself that this is a case where it would be expedient and in the interest of justice to permit compounding of the offences. It is not a case where the accused has acted under any sudden and grave provocation. It is a deliberate and conscious act. This is despite the injured's statement that he is joining in prayer for compounding of the offence.

The Additional Sessions Judge after recording of evidence found the accused guilty. The version of incident as accepted by the learned Additional Sessions Judge was that on 28.2.1991 around 9 PM all the residents of the Village Barwala including women and children had collected for lighting Holi. It was lit by injured's father Sh.Balbir Singh. Accused were also present. Accused Narender alias Phanu, Rohtas and Ram Kumar gave an exhortation to accused Mahesh that he should bring his truck and drive it over Balraj. Accused Mahesh came driving his truck no.DEG 2759 at a fast speed and drove it over Balraj who came under the said truck and suffered serious injuries on both his thighs and also on his right forearm. He was taken out from underneath the aforesaid truck by the villagers and was thereafter taken to a hospital for medical treatment. The injured suffered grievous injuries and multiple fractures. He remained hospitalised for about one year. He had suffered permanent disability on account of injuries sustained. A competent court has found the appellants/accused guilty of the offences committed in the aforesaid gruesome manner. These are offences against the society. When a person is accused of committing an offence under section 307

read with section 34 IPC in such a gruesome manner, the court need not in the exercise of inherent powers quash the criminal proceedings or allow compounding even though section 320 of the Code does not limit or affect the powers under section 482 of Criminal Procedure Code. In such cases, law should be permitted to take its own course and the matter ought to be decided on merits. The appellants, who are accused of committing offences in such a gruesome manner, cannot be permitted to set at naught their prosecution by means of affecting a monetary settlement even if the complainant had retracted his statement and supports the settlement. This is a case, where criminal justice system cannot be permitted to be bartered on the plea of settlement, enabling the parties to live in harmony, especially when the settlement is arrived at for commercial considerations.

Nothing stated hereinabove shall be taken as an expression of any opinion on merits of the case. In view of the foregoing discussion, prayers made for compounding of the offence and the disposal of the appeals in terms of the settlement is declined.

Case to be listed before the Regular Bench for hearing of the appeals on merits.

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