

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR**

SB:- Hon'ble Shri Justice G. S. Ahluwalia**Cr.A. No.169/2010**

Vijay Bahadur Kurmi & Others

vs.

State of MP

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Shri V.K. Saxena, Senior Counsel with Shri Aditya Singh, counsel for the appellants.

Shri RVS Ghuraiya, Public Prosecutor for the respondent/ State.

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JUDGMENT

(Delivered on 09/05/2018)

This Criminal Appeal under Section 374 of CrPC has been filed against the judgment and sentence dated 25th February, 2010, passed by Sessions Judge, Datia in Sessions Trial No.85/2009, by which the appellants have been convicted under Section 326/34 of IPC and have been sentenced to undergo the rigorous imprisonment of five years and fine of Rs.2,000/- each with default imprisonment.

(2) The necessary facts for the disposal of the present appeal in short are that on 29/10/2008 at about 05:30 pm, the appellants assaulted injured Amar Singh Kurmi by axe and lathi with an intention to kill him. While injured Amar Singh Kurmi was under treatment, he lodged an oral report at Police Station on 30/10/2008, alleging that on 29/03/2008 at about 05:30 pm, he along with Swami Sharan, Mata Prasad and other residents of the village were sitting on the platform of one Jwala Kurmi. At that time, all the appellants came there and scolded that the nephew of injured Amar Singh Kurmi, namely, Chandan had lodged the report on various occasions against them, therefore, now today, they will kill the injured. When injured Amar Singh Kurmi replied that he does not know anything about the acts of his nephew, then appellant Vijay Bahadur Kurmi shouted that the injured is trying to make them fool and started abusing him.

When injured Amar Singh objected to it, then appellant Vijay Bahadur Kurmi with an intention to kill injured Amar Singh Kurmi, gave an axe blow on his head, as a result of which he sustained an incised wound. Appellant Moorat Singh Kurmi gave a lathi blow on the right side of his head. One lathi blow was given by appellant Bhagirath Kurmi on his left hand and one lathi blow was given by appellant Gangaram on his right shoulder. The injured Amar Singh Kurmi fell down on the platform. Then, Swami Sharan and Mata Prasad etc. intervened in the matter. The injured Amar Singh Kurmi was got medically examined and after completing the investigation, police filed the charge sheet against the appellants for offence under Sections 307, 325/34 of IPC. The Trial Court by order dated 03/08/2009, framed the charge under Section 307 of IPC against all the appellants.

(3) The appellants abjured their guilt and pleaded not guilty.

(4) The prosecution, in support of its case, examined Jwala Prasad (PW1), Dr. RS Parihar (PW2), Dr. Charu Gehlot (PW3), Mata Prasad (PW4), Alok Kumar Solanki (PW5), Ramnaresh Panchal (PW6), Amar Singh Kurmi (PW7), Maithil Sharan (PW8), Swami Sharan (PW9), Kalka Prasad (PW10), Akhilesh (PW11), Radheyshyam (PW12) and OP Pandey (PW12). The appellants examined Ayodha Prasad (DW1) in their evidence.

(5) The Trial Court by judgment dated 25th February, 2010 acquitted the appellants for offence under Section 307 of IPC and convicted them for offence under Section 326/34 of IPC and sentenced them to undergo the rigorous imprisonment of five years and fine of Rs.2,000/- each with default imprisonment.

(6) It is submitted by learned Senior Counsel for the appellants that during pendency of this appeal, the parties have resolved their dispute and accordingly, an application under Section 320 of CrPC for compromise has been filed and the factum of compromise has been duly verified by Principal Registrar of this Court. Although in the light of the judgments passed by Supreme Court in the cases of **Gian Singh vs. State of Punjab** reported in **(2012) 10 SCC 303** and

Narinder Singh & Ors. vs. State of Punjab & Anr. reported in **(2014) 6 SCC 466**, the proceedings cannot be quashed on the ground of compromise at the appellate stage, but the factum of compromise can always be considered while assessing the quantum of punishment. It is submitted by the learned Senior Counsel for the appellants that appellant Vijay Bahadur Kurmi had remained in jail for 4 months 12 days, whereas appellant Gangaram Kurmi had remained in jail for 2 months 26 days, appellant Moorat Singh Kurmi had remained in jail for 2 months 24 days and appellant Bhagirath Kurmi had remained in jail for 3 months. Under these circumstances, where the parties have resolved their dispute and complainant Amar Singh Kurmi has forgiven the appellants, then the period of detention already undergone by the appellants is sufficient to meet the ends of justice. It is further submitted that in lieu of jail sentence, the appellants are ready to pay the enhanced fine amount.

(7) *Per contra*, the submissions made by learned Senior Counsel for the appellants is opposed by State Counsel. It is submitted by State Counsel that according to the prosecution case, the appellants had a suspicion that Chandan, the nephew of the victim Amar Singh Kurmi, was making complaints against them, therefore, without any personal grievance against the complainant, they assaulted him, causing various injuries including the fracture of mid shaft of left ulna and, therefore, the trial Court has not committed any mistake in awarding the rigorous imprisonment of five years.

(8) Considered the submissions made by the counsel for the parties.

(9) Dr.RS Parikar (PW2) had medically examined injured Amar Singh Kurmi (PW7) and on medical examination, he found that the general condition of the injured was very poor. He was unconscious and was unable to sit and walk. Vomiting was present with blood mixed. Bleeding profused from wound and clotted blood was present in left ear. On examination, this doctor had found the following injuries on the body of injured Amar Singh Kurmi:-

"(1) Incised wound present over left parietal region of skull, size 5 cm x ½ cm x bone deep with profused bleeding.

(2) Contusion with hematoma with swelling present over right temporal region of skull, size 4 cm x 3 cm.

(3) Lacerated wound present over left forearm and middle of radial border, size 2 cm x ½ cm x bone deep bleeding from wound present.

(4) Contusion present over right shoulder, size 4 cm x 2 cm on scapular region."

The injury No.4 was found to be simple in nature, whereas Injury nos. 1 and 2 were found to be dangerous to life and x-ray was advised for injury nos.1 to 3. The MLC report is Ex.P3. In x-ray, Dr. Charu Gehlot (PW3) who had conducted the X-ray, had found that injured Amar Singh Kurmi had suffered a fracture of mid shaft of left ulna. The X-ray report is Ex.P4 and X-ray plates are ExP5 and ExP6. Thus, it is clear that injured Amar Singh Kurmi had sustained one incised wound as well as three lacerated wounds on different parts of body including his hand and had suffered a fracture on mid shaft of left ulna. According to the prosecution case, appellant Vijay Bahadur Kurmi had caused an axe blow on his head, appellant Moorat Singh Kurmi gave a lathi blow on the right side of his head, whereas appellant Bhagirath gave a lathi blow on his left hand and appellant Gangaram gave a lathi blow on his right shoulder.

(10) It is submitted by the learned Senior Counsel for the appellants that since a fracture was suffered by injured Amar Singh Kurmi because of lathi blow given by appellant Bhagirath, therefore, at the most, it can be said that the appellants are guilty for committing offence under Section 325 of IPC, as no grievous injury was found to have been caused by an axe blow given on the head of injured Amar Singh Kurmi (PW7) by appellant Vijay Bahadur Kurmi. The submission made by learned Senior Counsel for the appellants cannot be accepted for the simple reason that where all the four accused persons in furtherance of common intention have caused injuries to injured Amar Singh Kurmi (PW7), then the act of the appellants cannot be separated and cannot be considered separately.

Merely because no fracture was found on the head of the injured Amar Singh, therefore, the injury caused by an axe on the head of injured Amar Singh Kurmi cannot be treated as simple in nature by ignoring the fact that co-accused Bhagirath had caused a fracture on the hand of injured Amar Singh Kurmi.

(11) Thus, considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the trial Court did not commit any mistake in convicting the appellants for offence under Section 326 of IPC because the offence was committed by all the four appellants in furtherance of common intention, therefore, they are liable for the said offence. Accordingly. The conviction of the appellants under Section 326/34 of IPC, as recorded by the trial Court is hereby affirmed.

(12) So far as the question of sentence is concerned, it is submitted by learned Senior Counsel for the appellants that the complainant has forgiven the appellant and had entered into compromise with the appellants and accordingly, during pendency of this appeal, IA No.728/2017, which is an application under Section 320 of CrPC was filed for acquittal of the appellants on the basis of compromise. This Court by order dated 21/02/2017 had directed the parties to appear before the Principal Registrar of this Court on 06/03/2017 for verification of factum of compromise. The Principal Registrar of this Court after recording the statements of the witnesses has given the following report:-

"Statements of Complainant/ injured Maithlisharan and Amar Singh and accused/appellants Vijay Bahadur, Gangaram, Murat Singh and Bhagirath and Laxminarayan are recorded matter perused, inquired and heard as to factum of compromise.

After verifying from parties present before me that they have arrived at compromise voluntarily without any fear or force.

According to Sec. 320 of CRPC the offences U/s 326/324 of IPC is not compoundable."

(13) The Supreme Court in the cases of **Gian Singh** and **Narinder Singh (supra)**, has held that once the accused is convicted, then the

proceedings cannot be quashed on the basis of compromise. Therefore, the appellants cannot be acquitted merely on the ground that the parties have compromised the matter. However, the quantum of sentence can always be kept in mind while assessing the question of sentence. The Supreme Court in the cases of **Ishwar Singh vs. State of Madhya Pradesh**, reported in **(2008) 15 SCC 667**, **Jetha Ram and Others vs. State of Rajasthan**, reported in **(2006) 9 SCC 255**, **Murugesan and Others vs. Ganapathy Velar**, reported in **(2001) 10 SCC 504**, **Ishwarlal vs. State of Madhya Pradesh**, reported in **(2008) 15 SCC 671** and **Ram Pujan and Others vs. State of Uttar Pradesh**, reported in **(1973) 2 SCC 456**, has held that the factum of compromise can be taken into consideration while assessing the sentence.

The Supreme Court in the case of **Ishwar Singh (supra)** had held as under:-

"**(14)** In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind."

The Supreme Court in the case of **Jetha Ram (supra)** has held as under:-

"**4.** Before this Court the parties have filed a compromise petition. The offence u/s. 326 of the Indian Penal Code is not compoundable, as such it is not possible to record the compromise, but it is well settled that though compromise cannot be recorded for a non-compoundable offence, but the effect of compromise can be taken into consideration while awarding the sentence. The appellants have remained in custody for a period of about five months. In our view, the ends of justice would be met if the sentence of imprisonment awarded against the appellants is reduced to the period already undergone."

The Supreme Court in the case of **Murugesan (supra)** has held as under:-

"**2.** Mr. Sivasubramaniam, learned senior counsel

appearing for the appellants submits that the parties have since compromised and have resolved all their differences and are now having cordial relations. This position is not disputed by learned Counsel appearing for the opposite side. We, therefore, while maintaining conviction of the appellants under [Sections 323/343/355](#) and [365, I.P.C.](#), reduce the substantive sentence to the period already undergone by them, but maintain the sentence of fine and: imprisonment in default of payment of fine. We, however, direct that out of the fine paid Rs. 25, 000/- shall be paid to each of the two injured person."

The Supreme Court in the case of **Ishwarlal (supra)** has held as under:-

"**1.**Special leave granted. Having regard to the facts and circumstances of the case and having regard to the fact that affidavit for compromise has been filed, though the offence is not compoundable, we reduce the sentence imposed on the appellant (sic to the period already) undergone. We do so in the light of the aforesaid circumstances. The sentence is modified to the period of sentence already undergone."

The Supreme Court in the case of **Ram Pujan (supra)** has held as under:-

"**7.** The appellants during the pendency of the appeal were not released on bail and are stated to have already undergone a sentence of rigorous imprisonment for a period of more than four months. As the parties who belong to one family have settled their dispute, it is, in our opinion, not necessary to keep the appellants in jail for a longer period. The major offence for which the appellants have been convicted is no doubt non-compoundable, but the fact of compromise can be taken into account in determining the quantum of sentence. It would, in our opinion, meet the ends Of justice if the sentence of imprisonment awarded to the appellants is reduced to the period already undergone provided each of the appellants pays a fine of Rs. 1,500 in addition to the period of imprisonment already undergone for the offence under [Section 326](#) read with [Section 34](#) Indian Penal Code. In default of payment of fine, each of the appellants shall undergo rigorous imprisonment for a total period of one year for the offence under [Section 326](#) read with [Section 34](#) Indian Penal Code. Out of the fine, if realised, Rs. 2,000 should be paid to Ram Sewak and Rs. 2,000 to Ram Samujh as compensation. We order accordingly."

(14) In the present case, all the four appellants have given one

blow each to the injured Amar Singh Kurmi (PW7), therefore, all the four appellants have played an active role. Out of four blows, two blows were given on the head of injured Amar Singh Kurmi. Although the trial Court has acquitted the appellants for offence under Section 307 of IPC and in the absence of challenge of acquittal of the appellants under Section 307 of IPC, this Court is not required to consider that whether the said blows were given on the head of the injured Amar Singh with an intention to kill him or not. However, one thing is clear that the vital part of injured Amar Singh Kurmi was chosen by the appellants. When injured Amar Singh Kurmi was brought to the hospital, his condition was poor and he was unconscious. A fracture of mid shaft of left ulna of injured Amar Singh Kurmi was also found. According to learned Counsel for the appellants the appellants have already undergone the actual jail sentence as under:-

- (i) Vijay Bahadur Kurmi has already undergone 4 months 12 days.
- (ii) Gangaram Kurmi has already undergone 2 months 26 days.
- (iii) Moorat Singh Kurmi has already undergone 2 months 24 days.
- (iv) Bhagirath Kurmi has already undergone 3 months.

Under these circumstances, where injured Amar Singh Kurmi has forgiven the appellants, then the factum of compromise can always be taken into consideration.

(15) Considering the manner in which the offence has been committed by the appellants, as well as the situs of body on which the injuries were caused by the appellants and the active role played by all the four appellants, coupled with the fact that the complainant has forgiven the appellants, the jail sentence of five years awarded by the trial Court, is set aside and is reduced to the jail sentence of rigorous imprisonment of one year as no minimum jail sentence is provided for offence under Section 326 of IPC. The fine amount of Rs.2,000/- as imposed by the trial Court is enhanced to Rs.10,000/-. Therefore, while maintaining the conviction recorded by the trial

Court (Sessions Judge, Datia) by judgment dated 25th February, 2010 in ST No. 85/2009, the sentence is modified and in place of rigorous imprisonment of five years and fine of Rs.2,000/-, it is directed that the appellants shall undergo the rigorous imprisonment of one year and fine of Rs.10,000/- each and in case of default, they shall further undergo the rigorous imprisonment of three months.

(16) Accordingly, the judgment and sentence dated 25th February, 2010, passed by Sessions Judge, Datia in Sessions Trial No. 85/2009 is affirmed with aforementioned modification.

(17) The appellants are on bail, their bail bonds are discharged. They are directed to immediately surrender before the trial Court for undergoing the remaining jail sentence and for payment of the aforesaid enhanced fine amount.

(18) Consequently, this appeal succeeds to the extent mentioned above and is allowed in part.

(G. S. Ahluwalia)
Judge