

**(2014) 1 ACR 939 : (2014) 84 ALLCC 400 : (2014) ALLMR(Cri) 386 : (2014) CriLJ 609 :
(2014) 1 RCR(Criminal) 199 : (2013) 14 SCALE 235 : (2014) 4 SCC 149 : (2014) 3 SCJ
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Supreme Court of India

Case No: Criminal Appeal No. 2018 of 2013 (Arising out of SLP (Criminal) No. 9278 of 2012)

State of Rajasthan

APPELLANT

Vs

Shambhu Kewat and
Another

RESPONDENT

Date of Decision: Nov. 28, 2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) – Section 320, 320(9), 428, 482#Penal Code, 1860
(IPC) – Section 307, 323, 325, 34, 427

Citation: (2014) 1 ACR 939 : (2014) 84 ALLCC 400 : (2014) ALLMR(Cri) 386 : (2014) CriLJ
609 : (2014) 1 RCR(Criminal) 199 : (2013) 14 SCALE 235 : (2014) 4 SCC 149 : (2014) 3 SCJ
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Hon'ble Judges: K.S. Panicker Radhakrishnan, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Rameshwar Prasad Goyal

Final Decision: Dismissed

Judgement

K.S. Panicker Radhakrishnan, J.
Leave granted.

2. Respondents herein were charge-sheeted for the offences punishable under Sections
307, 323, 325, 427 read with Section 34 Indian Penal

Code. They were tried before the Court of Additional Sessions Judge, Fast Track No. 1,
Kota, Rajasthan. From the side of the prosecution, PWs

1 to 5 were examined and Exh. P1-P12 were produced. From the side of defence, second
accused was examined as DW1. The Sessions Court,

after hearing the parties and considering the oral and documentary evidence, found the accused persons guilty of the offence punishable u/s 307

read with Section 34 Indian Penal Code, but acquitted them of the rest of the charges, vide its order dated 9.7.2009. Later, the accused persons

were heard on sentence, and they stated that they are not habitual criminals and are aged 26 and 28 years, respectively. Further, it was pointed out

that they are poor labourers married and have children. Further, it was also pointed out that the injuries were caused due to sudden provocation,

and were not pre-meditated. After hearing the accused and the prosecution, the trial Court, on sentence, passed the following order:

Heard both the parties. On the basis of the above arguments, perused the case file. Though no criminal record has been produced by the

Prosecution against the accused, nor has any arguments about the habitual criminal, however, from the evidence came on file, this fact has been

established that accused Banwari and Shambhu had been taking the goods on credit from the complainant Abdul Rashid, also on the day of

incident, had come to take goods on credit and due to arrears of money, he had refused to give the goods on credit. Then they again came back at

the place of incident. Thereafter about 10 minutes both came with iron rod and a strip of iron like sword in a planned manner, and both together

made a murderous attack on Abdul Rashid. By causing fatal injury on the head after fracture of piece of bone of head of Abdul Rashid, went inside

the brain. The doctor performed the surgery and taken out. Thereafter it cannot be said that the accused has injured in ignorance, suddenly on

instigation and cause the said injury to Abdul Rashid and for committing the act by them, they have no intention or purpose for committing such act.

Case u/s 307 Indian Penal Code has been proved against the accused beyond doubt. Therefore in this situation lenient view cannot be adopted

against the accused. The Hon"ble Supreme Court has shown this intent in several cases that if the leniency is given to the accused, then the criminal

people in the society will be encouraged. The accused had without any reason has injured the complainant sitting in his shop. This has been

witnessed by other people of the society sitting in shop. Adopting lenient view with the accused, faith of the other people of the society will go from

justice. In such situation, as per the direction given by the Hon"ble Supreme Court, the accused are punished as under:

ORDER of SENTENCE:

Therefore accused Shambhu son of Babu Lal and accused Banwari Lal son of Babu Lal Kevat, residents of Iqbal Chowk, Sakatpura, Kota are

declared acquitted from the charge u/s 427 Indian Penal Code and both the accused are convicted and are sentenced for 10-10 (Ten-Ten) years

rigorous imprisonment and fine of Rs. 5000-5000/- (Rupees five thousand only) for the charge u/s 307 read with Section 34 Indian Penal Code. In

the event of committing default in the payment of fine will face additional simple imprisonment of 3-3 months. The period spent in police/judicial

custody by the accused will be adjusted in the period of original sentence under the provision of Section 428 Code of Criminal Procedure Warrant

of sentence be prepared. Recovered property in the case, iron road and strip of iron like sword be destroyed after expiry of limitation of appeal as

per directions. Copy of the judgment be supplied to the accused free of cost.

3. Aggrieved by the order of conviction and sentence, the accused persons approached the High Court by filing S.B. Criminal Appeal No. 825 of

2009. When the appeal came up for hearing, on 16.11.2011, the complainant, Abdul Rashid who was present in the court, stated that he and the

accused persons had entered into a compromise and, based on that compromise, he had received the compensation amount from the accused

persons for the injuries caused to him. Consequently, it was pointed out that he did not wish to pursue the appeal. Learned Counsel appearing for

the complainant submitted before the High Court that since the parties had buried the differences and since offence committed was "against an

individual", rather than "against the State", no fruitful purpose would be served by keeping the accused persons behind the bars, and hence, it was

requested that the case be compounded and the appeal be allowed.

4. We have examined the reasons stated by the High Court for acceding to that request. The High Court examined the scope of Sections 482 and

320 Code of Criminal Procedure and expressed the view that there are certain similarities and differences between compounding and quashing a

case on the basis of compromise and hence, quashing of a criminal proceeding upon a compromise is well within the discretionary power of the

Court. It also opined that while the power u/s 320 Code of Criminal Procedure is cribbed, cabined and confined, the power u/s 482 Code of

Criminal Procedure is vast, unparallel and paramount. On facts the High Court opined that it was a case where the fight between the parties had

occurred on the spur and heat of the moment and the assault was more a crime "against an individual", rather than "against the society at large".

The High Court held as follows:

In the present case, the fight occurred at the spur of the moment in the heat of the moment. According to the prosecution, both the sides were

verbally fighting when alleged, the Appellants struck Abdul Rashid (PW-3). The assault was more a crime against an individual than against the

society at large. Admittedly, both the parties have entered into a compromise. They have resolved their differences. Thus, it would be in the interest

of justice to allow the appeal.

5. The High Court felt that since the parties had entered into a compromise and resolved their disputes and differences, it would be in the interest

of justice to allow the appeal. Consequently, the appeal was allowed and the accused persons were acquitted of the offence under Sections 307

read with 34 Indian Penal Code. Aggrieved by the same, this appeal has been preferred.

6. Learned Counsel appearing for the State submitted that the High Court has completely misread and misunderstood the various principles laid

down by this Court in 296472 regarding the scope and ambit of Sections 482 and 320 Code of Criminal Procedure as well as the powers

conferred on the criminal Court to quash criminal proceedings involved in a non-compoundable offence, in view of the compromise arrived at

between the parties. The various guidelines laid down by this Court were also overlooked. Learned Counsel also submitted that the High Court

has also committed an error in holding that the offence which has been proved was merely an offence against an individual, rather than against the

State. Learned Counsel submitted that the Sessions Court had correctly noticed the nature of injuries and rightly came to the conclusion that the

accused had committed injuries not due to sudden provocation, but it was a premeditated incident and that the trial Court has rightly awarded the

sentence of 10 years rigorous imprisonment for the offence punishable u/s 307 Indian Penal Code.

7. Learned Counsel appearing for the Respondents, on the other hand, contended that the parties had entered into a compromise and, on the basis

of the compromise, the accused persons paid a substantial amount to the complainant for the injuries caused to him and taking note of the fact that

the alleged crime was committed on the spur of the moment without pre-meditation, the High Court was justified in compounding the offence and

acquitting the accused persons.

8. We may point out that in *Gian Singh (supra)*, this Court has held that quashing of offence or criminal proceedings on the ground of settlement

between an offender and the victim is not the same thing as compounding of offences. This Court also held that the power of compounding of

offences conferred on a Court u/s 320 Code of Criminal Procedure is materially different from the power conferred u/s 482 for quashing of

criminal proceedings by the High Court. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in

Section 320 Code of Criminal Procedure and the Court is guided solely and squarely thereby, while, on the other hand, the formation of opinion

by the High Court for quashing a criminal proceeding or criminal complaint u/s 482 Code of Criminal Procedure is guided by the material on

record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

9. The Court also opined that the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent

jurisdiction is distinct and different from the power given to a criminal court for compounding the offences u/s 320 Code of Criminal Procedure.

This Court further opined that the inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accordance with the

guidelines engrafted in such power, namely, (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. This Court also

cautioned that while exercising the power of compounding the offence, the court must have due regard to the nature and gravity of the crime.

10. We notice, in this case, admittedly, the offence committed u/s 307 Indian Penal Code is not compoundable. In 259369 the accused was

alleged to have committed an offence punishable u/s 307 Indian Penal Code and, with reference to Section 320 Code of Criminal Procedure, it

was held that Section 307 was not a compoundable offence and there was express bar in Section 320 that no offence shall be compounded if it is

not compoundable under the Code. In 263456 , a different note was struck by this Court, but certain reasons for compounding the offence u/s

307 Indian Penal Code were stated. In that case, this Court noticed that the incident had taken place in the year 1994 and the parties were related

to each other. Both the accused persons, at the time of the incident, were in their 20"s. Further, it was also noticed that a cross case was registered

against the complainant also in which he was convicted and sentenced. Further, it was also noticed that the accused persons had also undergone

certain period of sentence. The case which was settled between the parties, involved offences punishable u/s 325 read with Section 34 and also u/s

323 Indian Penal Code. It was in such circumstances that the Court felt that the settlement arrived at between the parties was a sensible one so as

to give quietus to the controversy. The Court while upholding the conviction, reduced the sentence awarded to the accused to the period they had

already undergone.

11. In 291028, this Court had an occasion to consider the question whether an offence u/s 307 Indian Penal Code could be compounded in terms

of the compromise reached at between the parties. It was categorically held that the offence u/s 307 Indian Penal Code is not compoundable in

terms of Section 320(9) Code of Criminal Procedure and that compounding of such an offence was out of question. Further, taking note of the fact

that the incident had occurred in the year 1991 and it was almost 20 years since then, and that the accused persons were agriculturists by

occupation and had no previous criminal background and there had been reconciliation among the parties, the Court held that the ends of justice

would be met if the substantive sentence awarded to the accused be reduced to the period already undergone.

12. We find, in this case, such a situation does not arise. In the instant case, the incident had occurred on 30.10.2008. The trial Court held that the

accused persons, with common intention, went to the shop of the injured Abdul Rashid on that day armed with iron rod and a strip of iron and, in

furtherance of their common intention, had caused serious injuries on the body of Abdul Rashid, of which injury number 4 was on his head, which

was of a serious nature.

13. Dr. Rakesh Sharma, PW5, had stated that out of the injuries caused to Abdul Rashid, injury No. 4 was an injury on the head and that injury

was ""grievous and fatal for life"". PW8, Dr. Uday Bhomik, also opined that a grievous injury was caused on the head of Abdul Rashid. Dr. Uday

conducted the operation on injuries of Abdul Rashid as a Neuro Surgeon and fully supported the opinion expressed by PW 5 Dr. Rakesh Sharma

that injury No. 4 was ""grievous and fatal for life"".

14. We notice that the gravity of the injuries was taken note of by the Sessions Court and it had awarded the sentence of 10 years rigorous

imprisonment for the offence punishable u/s 307 Indian Penal Code, but not by the High Court. The High Court has completely overlooked the

various principles laid down by this Court in Gian Singh (supra), and has committed a mistake in taking the view that, the injuries were caused on

the body of Abdul Rashid in a fight occurred at the spur and the heat of the moment. It has been categorically held by this Court in Gian Singh

(supra) that the Court, while exercising the power u/s 482, must have ""due regard to the nature and gravity of the crime"" and ""the societal impact"".

Both these aspects were completely overlooked by the High Court. The High Court in a cursory manner, without application of mind, blindly

accepted the statement of the parties that they had settled their disputes and differences and took the view that it was a crime against ""an

individual"", rather than against ""the society at large"".

15. We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the

other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the

Regulation of conduct and activities within the society. Why Section 307 Indian Penal Code is held to be non-compoundable, because the Code

has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the

individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons

had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger

objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at

large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society.

Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage

further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

16. We are, therefore, inclined to allow this appeal and set aside the judgment of the High Court. The High Court was carried away by the

settlement and has not examined the matter on merits, hence, we are inclined to direct the High Court to take back the appeal to its file and decide

the appeal on merits. Let the High Court dispose of the appeal within six months. Ordered accordingly.