MD. ABDUL SUFAN LASKAR AND ORS. A

v.

STATE OF ASSAM

(Criminal Appeal No.1343 of 2008)

AUGUST 25, 2008

B

[C.K. THAKKER AND DALVEER BHANDARI, JJ.]

Code of Criminal Procedure, 1973 – s.320 – Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) – Compounding of offence – Offence under s.324 IPC – Allegedly committed in 1995 – Parties compromising the matter – Whether compounding of the offence was permissible – Held, Yes, since offence u/s.324 was compoundable under the CrPC as it stood in 1995 – Though such offence is no more compoundable in view of the CrPC (Amendment) Act, 2005, but the said Amendment Act came into force only from June 23, 2006 and thus has no application to the facts of the present case – Penal Code, 1860 – s.324. C D

Appellants alongwith other accused persons allegedly attacked *'A'* with deadly weapons and caused grievous injuries on different parts of his body. The Courts below convicted the Appellants under ss.324 and 147 IPC. E

It was stated before this Court, that the parties had meanwhile compromised the matter and had entered into an amicable settlement. F

The question which arose for consideration in the present appeal was as to whether in view of the said compromise and settlement, compounding of the offence allegedly committed by the Appellants under s.324 IPC was permissible. G

Allowing the appeal, the Court

 H

A HELD:1. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case. Certain offences are very serious B in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. [Para 12] [566-G-F]

Vinjay Devanna Nayak v. Ryot Sewa Sahkari Bank Ltd. C (2008) 2 SCC 305 – relied on.

2.1. s.320, CrPC 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 D the Court. Sub-section (1) of s.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. Offences not referred to in sub-E sections (1) and (2) of Section 320 and not included in the concerned Table are not compoundable. Similarly, offences punishable under laws other than the Indian Penal Code also cannot be compounded. Sub-section (8) of s.320 CrPC expressly enacts that where the composition of an offence under this section is recorded F by the Court, it shall have effect of an acquittal of the accused with whom the offence has been compounded. Under the Code, as originally enacted in 1973, an offence punishable under s.324, IPC (voluntarily causing hurt by dangerous weapons or means) was made G compoundable with the leave of the Court. However the offence of voluntarily causing hurt by dangerous weapons or means punishable under s.324, IPC is no more compoundable in view of the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) which H came into force from June 23, 2006. [Paras 13, 14, 15,

16] [566-H, 567-A-H, 568-A]

2.2. The appellants had allegedly committed the offence on June 15, 1995. In view of the above fact, Act 25 of 2005 has no application to the facts of the present case. Therefore, there is no ground to refuse permission as sought by the parties who have compromised the offence which was compoundable under the Code as it stood in 1995. If it is so, compounding can be permitted and accused (appellants) can be acquitted. [Para 17] [268-B-C]

Case Law Reference

(2008) 2 SCC 305 relied on Para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1343 of 2008

From the final Judgment and Order dated 31.07.2007 of the High Court of Assam at Gauhati in Criminal Revision No. 331 of 2003

Azim H. Laskar and Abhijit Sengupta for the Appellants.

Vishal Arun, Anand and Avijit Roy (for M/s. Corporate Law Group) for the Respondent.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Delay condoned. Leave granted.

2. The present appeal is filed against an order of conviction and sentence recorded by the Chief Judicial Magistrate, Hailakandi on September 21, 2002, confirmed by the Sessions Judge, Hailakandi on May 26, 2003 and also confirmed by the High Court of Assam on July 31, 2007.

3. Few relevant facts of the case are that on June 15, 1995, according to the case of the prosecution, one Moinul Haque Laskar lodged a First Information Report (FIR) before the Officer-in-charge, Hailakandi Police Station. In the FIR, it was alleged by the informant complainant that his brother Abdul

A Haque Laskar had gone to cultivate land early in the morning at about 6.30 a.m. Eight accused as mentioned in the FIR armed with deadly weapons attacked Abdul Haque Laskar and caused grievous injuries on different parts of his body. On hearing hue and cry of the complainant Moinul Haque Laskar
B and his brothers, several persons arrived there. The accused persons fled away and the injured was taken to hospital. On receiving FIR, Officer-in-charge of Hailakandi Police Station registered Case No. 195 of 1995 against the accused for commission of offences punishable under Sections 147, 325
C and 506 of Indian Penal Code (IPC) and started investigation. During the course of investigation, several statements came to be recorded. The injured was examined by the Medical Officer and a charge sheet was submitted for offences punishable under Sections 147, 323, 326 and 506, IPC against
D all the accused.

4. The charge was read over and explained to the accused who pleaded 'not guilty' and claimed to be tried. The prosecution, in order to prove the case against the accused, examined five witnesses including injured Abdul Haque Laskar,
E Medical Officer and Investigating Officer. The 'defence' did not examine any witness. In the statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), the accused denied the incident and involvement in any manner whatsoever.

F 5. The learned Chief Judicial Magistrate, Hailakandi vide his judgment and order dated September 21, 2002, held the case against accused proved for offences punishable under Sections 147 and 324, IPC. On sentence, however, the learned Magistrate noted that accused Islam Uddin (accused No.5),
G Sahab Uddin (accused No.6), Aftab Uddin (accused No.3) and Fakar Uddin (accused No.2) were young. He, therefore, thought it fit to grant benefit of releasing them on admonition since they did not appear to have committed any offence in past nor they were involved in any offence. The learned Judicial
H Magistrate, however, convicted Abdul Subhan (accused No.1),

Abdul Wahid (accused No.7), Abdul Kuddus (accused No.8) and Muslim Uddin (accused No.4) for offences punishable under Sections 147 and 324, IPC. For an offence punishable under Section 147, IPC, the learned Magistrate ordered the abovestated accused to undergo simple imprisonment for one month and a fine of Rs.100 each, in default, simple imprisonment for five days. For the offence punishable under Section 324, IPC, he ordered them to undergo simple imprisonment for two months and a fine of Rs.200/- each, in default, simple imprisonment for ten days. The sentences were ordered to run concurrently.

6. Being aggrieved by the order of conviction and sentence, all the accused preferred Criminal Appeal No. 20 of 2002. The learned Sessions Judge upheld the order of conviction as well as sentence and dismissed the appeal.

7. The four accused who were ordered to undergo substantive sentence, then preferred Criminal Revision No. 331 of 2003. The High Court, by the impugned order, dismissed the revision holding that no illegality could be said to have been committed by both the Courts below. The said order is challenged in the present appeal.

8. On April 1, 2008, the Hon'ble Chamber Judge granted the prayer for exemption from surrendering in view of short sentence imposed on the appellants. The matter was then placed before the Court for admission hearing on April 28, 2008. On that day, it was stated by the learned counsel for the appellants that the parties had entered into an amicable settlement and though the offence punishable under Section 324, IPC has now been made non-compoundable, at the time when the offence was committed, it was compoundable. The Court, in view of the above statement, issued notices by making them returnable early. Notice was also ordered to be issued to injured Abdul Haque Laskar. Notices were accordingly served on respondents.

9. We have heard learned counsel for the parties.

A 10. The learned counsel for the appellants submitted that the parties have compromised the matter, entered into settlement and an application is made to that effect praying therein that compounding may be ordered for offences punishable under Sections 147 and 324, IPC and an B appropriate order in accordance with law may be passed. Compromise deed is also placed on record signed by the parties wherein it is expressly stated that the injured Abdul Haque Laskar has voluntarily given his consent without any force, threat, coercion, undue influence, pressure etc., from C any quarter whatsoever for making the joint compromise petition before this Court. A prayer is, therefore, made by all the parties to compound the offence and acquit the three appellants who have approached this Court.

11. Now it is no doubt true that every crime is considered D to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of law administrating criminal justice to punish a E criminal.

12. But there are offences and offences. Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by F entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case [Vinjay Devanna Nayak v. Ryot Sewa Sahkari Bank Ltd., G (2008) 2 SCC 305].

13. So far as the Code 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 H

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 declares; "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 Indian Penal Code also cannot be compounded.

14. 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.

15. Under the Code, as originally enacted in 1973, an offence punishable under Section 324, IPC (voluntarily causing hurt by dangerous weapons or means) was made compoundable with the leave of the Court. The said entry read as under:

TABLE

Offence	Section of the Indian Penal Code Applicable	Person by whom offence may be compounded
1	2	3
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.

16. It is no doubt true as stated by the learned counsel for the appellants even at the time of preliminary hearing of this matter that by the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the above entry has

A been deleted. In other words, an offence of voluntarily causing hurt by dangerous weapons or means punishable under Section 324, IPC is no more compoundable. The Amendment Act of 2005 came into force from June 23, 2006.

17. As we have already noted, according to the B prosecution, the appellants had committed the offence on June 15, 1995. In view of the above fact, in our opinion, Act 25 of 2005 has no application to the facts of the case. We, therefore, see no ground to refuse permission as sought by the parties who have compromised the offence which was compoundable C under the Code as it stood in 1995. If it is so, compounding can be permitted and accused (appellants) can be acquitted.

18. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compounded by compromise D between the parties and there is no illegality therein, such compounding can be permitted by the Court. The appellants are, hence, entitled to acquittal.

19. The order of conviction and sentence recorded by all E Courts is hereby set aside and the appellants are ordered to be acquitted of the charges levelled against them.

B.B.B. Appeal allowed.