

Manoj & Anr vs State Of M.P on 25 September, 2008

Equivalent citations: AIR 2009 SUPREME COURT 22, 2008 (9) SCC 116, 2008 AIR SCW 6869, 2009 (1) AIR JHAR R 837, 2008 (3) SCC(CRI) 699, 2008 (12) SCALE 858, 2008 (2) CALCRILR 617, (2008) 2 CRILR(RAJ) 808, 2008 CALCRILR 2 617, 2008 CRILR(SC&MP) 808, (2008) ILR (KANT) 4809, (2008) 106 CUT LT 786, (2008) 12 SCALE 858, 2008 CRILR(SC MAH GUJ) 808, (2008) 4 JCC 2356 (DEL), (2008) 4 DLT(CRL) 64, (2009) 2 GUJ LH 56, (2008) 3 MAD LJ(CRI) 1349, (2009) 1 ORISSA LR 632, (2008) 4 CURCRIR 149, (2009) 64 ALLCRIC 474, (2008) 4 CHANDCRIC 207, (2008) 4 ALLCRILR 720, 2008 (2) ALD(CRL) 777

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Bench: Lokeshwar Singh Panta, R. V. Raveendran

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1530 OF 2008

[Arising out of S.L.P. (Crl.) No. 1681 of 2008]

Manoj & Anr.

.....

Appellants

Versus

State of Madhya Pradesh

.....

Respondent

JUDGMENT

Lokeshwar Singh Panta, J.

1. Leave granted.

2. Manoj and Bijendra Singh - two brothers have filed this appeal against the judgment and order

dated 11.12.2007 passed in Criminal Appeal No. 631/2000 by the High Court of Madhya Pradesh Bench at Gwalior whereby and whereunder the conviction of Manoj-appellant No. 1 herein recorded by Special Judge (NDPS) and Additional Sessions Judge, Gwalior in Sessions Trial No. 161/99 under Section 307 read with Section 34 of the Indian Penal Code [for short 'IPC'] has been altered to Section 324 IPC and sentenced to undergo rigorous imprisonment for 3 years, whereas conviction of Bijendra Singh-appellant No. 2 herein (as also accused No.2-Ram Avtar) from Section 307 read with Section 34 IPC has been converted to Section 324 read with Section 34 IPC. Appellant No. 2 is sentenced to undergo rigorous imprisonment for 3 years, whereas Ram Avatar has been ordered to undergo rigorous imprisonment for one year. The conviction of appellant No. 1 under Section 25 (1B) (a) read with Section 3 of the Arms Act has been set aside.

3. Briefly stated, the facts of the prosecution case are that on 23.01.1999 at about 10:00 a.m. complainant Bahadur Singh (P.W. 4) along with Rakesh (P.W. 2) and Ram Varan Singh (P.W. 9) (both hostile witnesses) was excavating sand on the bank of river Devipura near village Duhia Chak. Appellant No. 2 armed with 12 bore gun, his brother Appellant No. 1 armed with katta (country made fire-arm) and Ram Avatar- accused holding pharsa in his hand came to the spot and started abusing the complainant (P.W. 4). P.W. 4 told them that he was extracting sand from government land. It was alleged that Ram Avatar-accused gave pharsa blow which caused injury to the calf-ankle of complainant's left leg, back and knee. Appellant No. 2 fired gun shot which hit on the wrist of right hand of the complainant whereas Appellant No. 1 fired pellets from katta which hit the head and forehead of Bahadur Singh, who as a result of receiving the injuries fell on the ground. All the three accused persons thereafter ran away from the scene of occurrence.

4. Injured Bahadur Singh lodged First Information Report (Exhibit - P5) on the same day at Police Station, Bijoli. He was sent to the hospital for medical examination. Investigation of the case was conducted by Assistant Sub-Inspector Babu Ram Sharma (P.W. 10) on the spot. During investigation, he seized one brass cartridge and recorded the statements of the witnesses. Sub-Inspector Ashok Tiwari (P.W. 14) arrested Appellant No. 1 on 08.02.1999 and recorded his disclosure statement (Exhibit - P11). Pursuant thereto, 'Katta' which was being used by him at the time of occurrence of the offence, was produced from a hidden place at the back of 'kothi' constructed in the field of Majboot Singh Jaat. Ram Avatar was arrested on 08.02.1999 and on his statement; pharsa was recovered from the field of Majboot Singh Jaat. Pistol allegedly used by Appellant No. 2 was examined by Santosh Singh (P.W.

11) in D.R.P. Line, Gwalior, who certified that the said pistol was in running condition as per his Report (Exhibit- P18). Brij Mohan Sharma, Sub-Divisional Magistrate (P.W. 12) produced on record permission (Exhibit -P19) to prosecute the accused under the Arms Act. On receipt of Injury Report and X-Ray Report prepared by Dr. Purshottam Jaju (P.W. 5) and Dr. Avinash Naidu (P.W. 6) and completion of the investigation, charge sheet was filed against the above said three accused in the Court of First Class Magistrate. The Magistrate committed the trial of the case to the learned Sessions Judge. The learned Sessions Judge assigned the trial of the case to the Special Judge (NDPS) -cum- Additional Sessions Judge, Gwalior. The accused persons were charge sheeted under Section 307 read with Section 34 IPC, Section 25(1B) (a) and Section 3 of the Arms Act. The accused denied charges and claim to be tried.

5. During the trial, prosecution examined as many as 14 witnesses. The trial court, on analysis of the entire evidence on record, convicted all the three accused for offence punishable under Section 307 read with Section 34 IPC. In addition, Appellant No. 1 was convicted under Section 25 (1B)

(a) read with Section 3 of the Arms Act. Appellant No. 1 was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1000/- under Section 307 IPC and one year rigorous imprisonment and fine of Rs. 500/- for offence under Section 25 (1B) (a) read with Section 3 of the Arms Act. In default of payment of fine, he has been ordered to suffer three months' imprisonment. Appellant No. 2 and Ram Avatar (Accused Nos. 3 and 2) were sentenced to suffer five years' rigorous imprisonment and fine of Rs. 1000/- each for the offence under Section 307 read with Section 34 IPC. In default of payment of fine, both the accused persons were ordered to six months' imprisonment. Out of the fine amount, a sum of Rs. 2,000/- has been ordered to be paid to the complainant - P.W. 4.

6. Appellant No. 1 and Appellant No. 2 preferred Criminal appeal No. 631/2000 whereas Ram Avatar filed Criminal Appeal No. 650/2000 before the High Court of Madhya Pradesh, Bench at Gwalior. The learned Single Judge of the High Court partly allowed the appeals and altered the conviction from under Section 307 IPC to Section 324 IPC and imposed the aforesaid sentence upon them. The High Court acquitted Appellant No. 1 in respect of the offence under the Arms Act.

7. Now, Appellant No. 1 and his brother Appellant No. 2 have filed this appeal by way of special leave. It appears that no appeal has been filed by Ram Avatar-accused against the judgment and order of the High Court.

8. When the matter came up for hearing before this Court on 10.03.2008, it was submitted by the learned counsel for the appellants that the parties had agreed to compound the offence and in that view of the matter, notice was issued to the respondent-State and also to Bahadur Singh - complainant.

9. The appellants have filed Criminal Miscellaneous Petition No. 4257/2008 praying for permission to compound the offence with the complainant. They have inter alia stated that they and complainant - P.W. 4 are neighbours and are residing in the same village. After the alleged incident, the complainant and the appellants have come into close relations just like family members and they want to reside peacefully in future without any kind of disruption in their future life. Having considered their close relations amongst themselves, one village panchayat was held in the village in which the complainant has agreed to compound the offence with the appellants as now he has no grievance against the appellants.

10. Complainant Bahadur Singh has filed an affidavit (Annexure-P3) dated 16.01.2008. The complainant has stated in the said affidavit that on his complaint a case was registered against the appellants Manoj, Bijendra Singh and accused Ram Avatar which has resulted in the conviction of the accused persons. He stated that Manoj and Bijendra Singh are residents of his village and the village people have got their disputes compromised by holding a village panchayat and now they would desire to live peacefully and that at present no dispute exists between them.

11. Heard Shri Jai Prakash Pandey, learned counsel for the appellants, Shri R.P. Gupta, learned senior counsel for respondent-State and Shri Pramod Kumar Yadav for complainant-Bahadur Singh. The learned counsel for the complainant stated before us that the complainant has compromised the case with the appellants and in that view of the matter their appeal may be accepted.

12. We have examined the provisions of Section 320 of the Code of Criminal Procedure [for short 'the Cr.P.C.'] which deals with compounding of offences. Section 320(1) of the Cr. P.C. provides that the offences punishable under the Sections of Indian Penal Code specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table. Under sub- Section (2) of Section 320, offences punishable under the Sections of the Indian Penal Code, specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table. Voluntarily causing hurt by dangerous weapons or means by the accused constitutes an offence under Section 324 IPC which can be compounded by person to whom hurt is caused with the permission of the Court in terms of sub-Section (2) of Section 320 Cr.P.C.

13. It requires to be noticed that Cr.P.C. (Amendment) Act, 2005 [Act No.25/2005] amended Section 320 of the Code and in the Table under sub-Section (2) (a) the words "voluntarily causing hurt by dangerous weapons or means" in column 1 and the entries relating thereto in columns 2 and 3 has been omitted. But the said amendment by Act No. 25 of 2005 has not yet been brought into force. Therefore, the offence under 324 is still compoundable with the permission of the Court.

14. The appellants and the complainant are residents of the same village and with the intervention of the village panchayat the complainant has compounded the offence with the appellants and now he has no grievance against them. The appellants and the complainant have categorically stated in their affidavits filed before us that after the incident they have developed family relations and they wish to reside peacefully in the village in future without any kind of disruption in their future lives.

15. We are satisfied that the complainant has voluntarily desired to compound the offence with the appellants for sufficient and genuine reasons stated in their respective affidavits and such compounding is legal and valid. We allow the parties to compound the offence under Section 324 IPC. Criminal Miscellaneous Petition No. 4257/2008 stands, accordingly, allowed. In view of the compounding, the conviction and sentence is set aside. The appellants, who are in jail undergoing sentence, shall be set free forthwith, if not required in any other case. The appeal is disposed of accordingly.

.....J. (R. V. Raveendran)J. (Lokeshwar Singh Pantia)
New Delhi, September 25, 2008.