

Khursheed & Anr vs State Of U.P on 28 September, 2007

Equivalent citations: 2007 AIR SCW 6444, 2007 (12) SCC 68, 2007 (6) ALL LJ 625, AIR 2007 SC (SUPP) 1025, (2007) 4 CHANDCRIC 79, (2007) 4 CURCRIR 93, (2007) 6 SUPREME 615, (2007) 4 ALLCRILR 632, (2007) 59 ALLCRIC 1062, (2007) 11 SCALE 574, (2007) 38 OCR 616, 2007 ALLMR(CRI) 2962, (2007) 4 CRIMES 105, (2008) 1 CRILR(RAJ) 12, 2008 (2) SCC (CRI) 218, 2008 CRILR(SC&MP) 12, (2007) 4 RECCRIR 495, (2007) 59 ALLINDCAS 265 (SC), 2008 CRILR(SC MAH GUJ) 12, (2008) 2 ANDHLT(CRI) 29

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Bench: C.K. Thakker, Altamas Kabir

CASE NO. :

Appeal (crl.) 1302 of 2007

PETITIONER:

KHURSHEED & ANR

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT: 28/09/2007

BENCH:

C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 1302 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 3799 OF 2006 C.K. THAKKER, J.

1. Leave granted.

2. This appeal is directed against judgment and order passed by the High Court of Uttaranchal at Nainital on March 24, 2006 in Criminal Revision No. 627 of 2001. By the said order, the High Court dismissed the Revision and confirmed the order of conviction and sentence passed by the IIInd Assistant Session Judge, Roorkee on January 28, 1992 and confirmed by the District and Session Judge, Haridwar on June 9, 1992.

3. Brief facts leading to the present appeal are that according to the prosecution, on May 7, 1989 at about 8.00 a.m. in the morning, one Mahmood Hassan was returning to his house after offering a prayer (namaz). He met Zahoor, Khursheed, Naseem and Islam who assaulted him. When Smt.

Kulsoom @ Bhoori, wife of Mahmood Hassan attempted to save her husband, she was also assaulted. Injuries were sustained by both of them. The incident was witnessed by Islam, Waseel Ahmed and others. A First Information Report (FIR) was lodged by Gufran Ali, son of Mahmood Hassan on the same day at Jhabreda Police Station. The injured Mahmood Hassan and his wife Smt. Kulsoom were medically examined at Civil Hospital, Roorkee. The Doctor opined that all the injuries were caused by hard and blunt substance. After completion of police investigation, charge sheet was submitted against the accused persons and charge was framed for offences punishable under Sections 325 and 323 read with Section 34 of the Indian Penal Code (IPC).

4. The trial Court, vide its judgment and order dated January 28, 1992, convicted Khursheed and Islam (Accused Nos. 2 and 4) for offences punishable under Section 325 read with Section 34 IPC and sentenced each of them to undergo rigorous imprisonment for one year and to pay fine of Rs.500/- and also to undergo rigorous imprisonment for six months for the offence punishable under Section 323 read with Section 34 IPC. Both the sentences were ordered to run concurrently.

5. Feeling aggrieved by the order passed by the trial Court, the accused preferred an appeal in the Sessions Court, Haridwar. The learned Sessions Judge upheld the conviction of the accused but reduced sentence from one year to six months for offence punishable under Section 325 read with Section 34 IPC with fine of Rs.500/- each and from six months to three months for offence punishable under Section 323 read with Section 34 IPC. The challenge to the said conviction and sentence was unsuccessful and the High Court, as stated above, confirmed the order of conviction and sentence passed by the lower appellate Court.

6. When the matter was placed before the learned Chamber Judge of this Court, a statement was made that the parties had settled the matter and since the offences were compoundable, compromise could be recorded. A Deed of Compromise was also placed on record. But, since there was no affidavit filed in support thereof, the learned Chamber Judge permitted the appellants to file 'regular compromise petition'. The matter was, therefore, adjourned.

7. Again, the matter appeared on board on August 4, 2006 when the following order was passed:

"A Memorandum of Compromise has been filed before this Court which in effect, is a prayer for compounding the offence. The same has been signed by the complainant as well as by one of the injured witnesses, the other having died.

Issue notice to Gufran, the complainant. On account of old age of the lady namely Kulsoom, we do not require her presence at this stage. The aforesaid Gufran may appear in person or through his advocate.

Issue notice on the application for condonation of delay also.

In the meantime, the petitioners be released on bail on their furnishing bail bonds and sureties to the satisfaction of the Trial Court, till further orders".

8. We have heard learned counsel for the parties.

9. It was stated that the matter has been compromised between the parties, amicable settlement has been arrived at and compounding may be allowed. It was further submitted that both the offences for which the appellants were convicted are compoundable. Section 320 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') deals with Compounding of Offences. Sub-section (1) of Section 320 of the Code reads thus:

320. Compounding of offences. (1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) 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:--

Table .

10. An offence of causing hurt punishable under Section 323 IPC falls under sub-section (1) of Section 320 of the Code. It is compoundable at the instance of the person to whom the hurt is caused.

Permission of the Court is not necessary. Since the parties have compounded, the act of compounding is in accordance with law.

11. Sub-section (2) of the said section provides for compounding of offences with the permission of the Court. It reads thus:

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) 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:--

Table

12. An offence of causing grievous hurt punishable under Section 325 IPC is covered by sub-section (2) of Section 320 of the Code. It is thus clear that an offence punishable under Section 325 IPC is also compounded with the permission of the Court.

13. The parties have compounded the offences. As stated in the compromise deed, Gurfan Ahmad, complainant and his mother Kulsoom @ Bhoori (injured) did not want any action against the appellants (accused). The parties are neighbours, their houses are situated adjacent to each other and they have been living peacefully for last many years and there is no dispute among them. It is further stated that to continue sweet relationship and harmony, complainant side does not want to take any action against the accused. A prayer is, therefore, made to accept the compromise.

14. On the facts and in the circumstances of the case, and considering the Deed of Compromise and having heard learned counsel for the parties, in our opinion, ends of justice would be met if we grant necessary permission for compounding an offence punishable under Section 325 read with Section 34 IPC as required by sub-section (2) of Section 320 of the Code. The offence punishable under Section 323 IPC has already been compounded by the parties.

15. Sub-section (8) of Section 320 states that the composition of offence under the section shall have an effect of acquittal of the accused with whom the offence has been compounded. The resultant effect of compounding of offences would be that the accused should be acquitted. In other words, once the offences have been compounded and the requisite permission is granted by the Court, the accused must be acquitted.

16. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. Compounding of offence is permitted and the appellants are ordered to be acquitted.