

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No(s). 390 OF 2019
(Arising out of (CrI.) No(s).9920/2018)

SHANKAR & ORS.

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA & ANR.

Respondent(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) Being aggrieved by the conviction under Sections 436 and 323 I.P.C. read with Section 34 I.P.C. the appellants no.1 to 3 have preferred this appeal.

(3) Appellant no.1-Shankar @ Shankar Harale and respondent no.2-Namdeo @ Namdeo Satwaji Harale (complainant) are the real brothers. Their agricultural lands are adjacent to each other and there was dispute between them on account of boundary of the field. On 21st May, 2009, respondent no.2-Namdeo (complainant) along with his two sons went to the Tehsil Office. At about 5.00 p.m. the appellants went to the hut of the second respondent (complainant) and there was wordy quarrel between the appellants and Dhondubai (PW-3) and Kanupatra @ Kanopatra (PW-4) who are wife and daughter-in-law of the

complainant. During the wordy quarrel, appellant no.2-Vivek pelted stones and the same hit on Dhondubai (PW-3). On being exhorted by appellant no.1-Shankar, appellant no.3-Parvatibai wife of appellant no. 1 set fire to the house of the second respondent-complainant. On the complaint lodged by the second respondent-Namdeo law was set in motion. On completion of investigation charge-sheet was filed against the appellants under sections 436, 323, 504 and 506 IPC.

(4) Based on the evidence of injured witness Dhondubai (PW-3) and Kanupatra (PW-4) and also taking into consideration the evidence of Dr. Dattarao Mirzapure (PW-8) who issued injury certificate to Dhondubai (PW-3), the Trial Court convicted the appellants under Sections 436 read with section 34 IPC and 323 I.P.C. read with Section 34 I.P.C. and sentenced them to undergo rigorous imprisonment for five years and six months respectively.

(5) In appeal, the High Court affirmed the conviction of the appellants under Section 436 I.P.C. read with Section 34 I.P.C. and the conviction under Section 323 I.P.C. and also maintained the sentence of imprisonment on each of the appellants-accused. Being aggrieved, the appellants preferred this appeal.

(6) We have heard Mr. Sudhanshu S. Choudhari, learned counsel appearing for the appellants, Mr. Venkata Krishna Kunduru, learned counsel appearing for the respondent-State and Mr. Shaku R. Ghatole, learned counsel appearing for respondent

no.2 (complainant) and also perused the impugned judgment and the evidence/materials on record.

(7) Dhondubai (PW-3) and Kanupatra (PW-4) are the eye-witnesses to the occurrence. In her evidence Dhondubai (PW-3) has stated that appellant no.2-Vivek pelted stones towards her which hit on her head and that she sustained injuries. Dhondubai (PW-3) further stated that on being exhorted by appellant no.1-Shankar Harale appellant no.3-Parvatibai set fire to her house. The evidence of Dhondubai (PW-3) is corroborated by Kanupatra (PW-4), daughter-in-law of the second respondent-Namdeo (complainant).

(8) By a careful consideration of evidence of Dhondubai (PW-3) and Kanupatra (PW-4), it is seen that appellant no.2-Vivek who is said to have wordy quarrel and pelted stones on Dhondubai (PW-3). The overt act of setting fire to the house is not attributed to him by either of the witnesses. Equally we do not find any evidence to hold that the second appellant-Vivek shared only common intention with appellants no.1 and 3 to invoke section 34 I.P.C. and to maintain the conviction of the second appellant-Vivek under Section 436 I.P.C. read with Section 34 I.P.C. The conviction of the second appellant-Vivek under Section 436 read with Section 34 I.P.C. is therefore set aside and appeal of second appellant which is allowed to that extent.

(9) However, the conviction of appellant no.1-Shankar Harale and appellant no.3-Parvatibai under Section 436 read with Section 34 I.P.C. is confirmed. But so far as the act of the second appellant-Vivek hitting Dhondubai (PW-3) with the stone, the conviction of the second appellant-Vivek under Section 323 I.P.C. is sustained.

(10) The appellants have filed a memo of compromise stating therein that they have compromised the matter with the second respondent-Namdeo (complainant). Mr. Shakul R. Ghatole, learned counsel appearing for the second respondent, has stated that the second respondent-Namdeo (complainant) is an aged person and he has reconciled with his brother-appellant no.1, Shankar Harale and voluntarily entered into compromise and submitted that the said compromise be taken into consideration.

(11) In Ishwar Singh v. State of Madhya Pradesh, (2008) 15 SCC 667, this Court held that in a non-compoundable offence the compromise between the parties is a relevant factor to be taken into consideration in considering the quantum of sentence. In paras 13 and 14 of Ishwar Singh (supra) it was held as under :

"13. In Jetha Ram v. State of Rajasthan (2006) 9 SCC 255, Murugesan v. Ganapathy Velar (2001) 10 SCC 504 and Ishwarlal v. State of M.P. (2008) 15 SCC 671 this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand v. State of

Rajasthan 1990 Supp SCC 681 such offence was ordered to be compounded.

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."

Insofar as the conviction of appellant no.1-Shankar Harale and appellant no.3-Parvatibai under Section 436 I.P.C. read with Section 34 IPC it would not be appropriate to compound the offence which is not compoundable under the Code ignoring the statutory provisions. However, taking into consideration the relationship of the parties and the factum of compromise between the parties which is a relevant circumstance, the sentence of imprisonment imposed upon the appellants no.1 and 3 under Sections 436 read with Section 34 I.P.C. is modified to the period already undergone by them. Insofar as the conviction of the appellants no.1 and 3 under Section 323 I.P.C. in view of the compromise between the parties the conviction of the appellants under Section 323 I.P.C. is set aside and they are acquitted of the charge under Section 323 I.P.C. in terms of Section 320(8) of the Cr.P.C.

(12) So far as the second appellant-Vivek is concerned his conviction under Section 436 read with Section 34 I.P.C is set aside and he is acquitted of the charge. Insofar as his conviction under Section 323 I.P.C. is concerned, in view of compromise entered into between the parties, the conviction of the second appellant-Vivek is set aside and he is acquitted under Section 320(8) of the Cr.P.C.

(13) The appeal is partly accordingly allowed.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
FEBRUARY 26, 2019.