IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2227 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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THAKOR PRADHANJI KUNVARJI

Versus

THE STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the PETITIONER(s) No. 1,2,3,4
MR. YOGENDRA THAKORE(3975) for the PETITIONER(s) No. 1,2,3,4
MS MAITHILI MEHTA, ADDL.PUBLIC PROSECUTOR for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 25/11/2017

ORAL JUDGMENT

1. This is an appeal preferred by the appellant under section 374 of the Code of Criminal

Procedure, 1973, against the judgment and order of conviction and sentence dated November 04, 2006, rendered by the learned Additional Sessions Judge, Patan, in Special (Atrocity) Case No.1 of 2006, qua the offences punishable under sections 323, 504, 337 and 114 of the Indian Penal Code and section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the appellants have been convicted for the offences punishable under sections 323, 504, 337 and 114 of the Indian Penal Code and sentenced them to undergo (i) rigorous imprisonment for one year and a fine of Rs.200/-, in default to undergo simple imprisonment for seven days, for the offence punishable under section 323 read with section 114 of the Indian Penal Code; (ii) rigorous imprisonment for three months and a fine of Rs.100/-, in default to undergo simple imprisonment for seven days for the offence punishable under section 504 read with section 114 of the Indian Penal Code; and (iii) rigorous imprisonment for one year and a fine of

Rs.100/-, in default to undergo simple imprisonment for three days, for the offence punishable under section 337 read with section 114 of the Indian Penal Code. Insofar as the charge of offence punishable under section 3(1)(x) of the Atrocity Act is concerned, all the appellants have been acquitted by the trial Court. Further, the trial Court has ordered all the sentences to run concurrently and also granted the benefit of set off under section 428 of the Code of Criminal Procedure.

2. It is the case of the prosecution that the original complainant Shri Ahokkumar Mohanlal Solanki was earning his livelihood by carrying out labour work by residing with his family at Vankarvas, Dukhwada, Jal Chok, Patan. On July 17, 2004, at around 09-00 p.m., when he went to his uncle's place after having dinner, one Shri Hitesh Manubhai Vankar was beaten up by Thakor Dilipji Mathurji and, therefore, the matter of Hitesh along with her son went to Dilip Mathurji Thakor and at that stage, the appellants had started quarrellling with Hitesh and his mother.

They also abused him. The original complainant and his uncle intervened to get the matter settled, however, the appellants, as per the case of the prosecution, got angry. The appellant No.1 had sword and the appellant No.2 had wooden stick had started beating both the original complainant and his uncle. During the said incident, the uncle of the complainant sustained injuries both with sword and wooden stick. Some injuries had been sustained with bricks. Thereafter, the appellants went to Hitesh's home and destroyed furniture and certain utensils and, therefore, the complaint in question was lodged with the concerned Police Station.

3. After due investigation, the case was committed and after recordance of the evidence under section 313 of the Code of Criminal Procedure, the entire evidence has been denied by the appellants. The Court heard both the sides and eventually convicted the appellants as mentioned hereinbefore.

4. It is needed to be stated at the outset that the appellant No.1-Thakore Pradhanji Kunvarji has already passed away during the pendency of the present appeal. His death certificate dated March 14, 2014, has been placed on record, which has been registered on March 25, 2014 and, therefore, the appeal qua him stands abated.

5. Insofar as the rest of the appellants are concerned, they are represented by the learned counsel Shri Yogendra Thakore through the legal aid. It is urged by him that there was a cross-complaint filed by the appellants, which has culminated in Sessions Case No.44 of 2006, as some of the prosecution witnesses have been convicted by the trial Court and aggrieved by such judgment and order, those persons have approached this Court by way of present appeal. He has further urged that both the sides have been residing in the neighbourhood and due to intervention of the wise people in the community, they have chosen to settle the matter. He has placed on record the settlement

arrived at by and between the parties on July 20, 2016. The parties also remained present before this Court to emphasis and harp upon the fact that an amicable settlement still subsists and they have no grievance left.

6. Shri Yogendra Thakore, learned counsel appearing for the appellants, has further pointed out to this Court that the provision of section 320 of the Code of Criminal Procedure permits compounding of the offence and the same has to be compounded by the person categorised in the third column of the table. He has urged that section 337 of the Indian Penal Code is compoundable by the person who is caused such hurt. Thus, so far as section 337 is concerned, it is, of course, the person who is hurt is entitled to compound the same. Likewise, section 504 of the Indian Penal Code is also made compoundable, which can be compounded by the person who has been insulted. He has, thus, urged that all the offences being compoundable and when the parties have genuinely settled

their disputes out of the Court and buried the enmity, this Court may not sustain the conviction.

6.1 He has also urged that the main accused i.e. the appellant No.1 in this case, has already passed away, who allegedly had the sword in his hand, whereas one of the appellants had only a wooden stick and the rest two appellants were alleged to be holding bricks. He has further urged that the injuries sustained were not serious in nature and the discharge of the injured witness from the hospital was on the very day on which such witness took the treatment. He has urged that there are other valid reasons for this Court not to sustain the judgment and order of conviction and sentence, however, in the wake of this amicable compromise arrived at by and between the parties, the Court may consider to act leniently. He has also urged that the appellants have already paid the amount of fine and no cause survives for continuing the

judgment and order of conviction and sentence.

7. *Per contra*, Ms.Maithili Mehta, learned Additional Public Prosecutor appearing for the respondent-State, has verified from those persons present in the Court that the parties have in the wake of intervention of the community leaders and the neighbours have chosen to enter into a compromise. She has further submitted that the fact is not in dispute that all the offences under which the appellants have been convicted, are compoundable in nature. The factum of death of the appellant No.1 is also not in dispute.

8. Having thus heard both the sides and also on considering the submissions and the subsequent events which have taken place, including the act of arriving at an amicable settlement by and between the parties, which has been reduced into writing and confirmed by the parties, after one year of the said compromise also, this Court would like to examine as to whether the offences under which the judgment and order of conviction

and sentence has been passed, are compoundable in nature and whether the request of compounding the same has come from the person who has sustained the injury. The answer should be in the affirmative, when each provision has been examined in light of section 320 of the Code of Criminal Procedure. This Court cannot be oblivious of the fact that the parties had made cross-complaints and the same had also resulted into conviction of some of the witnesses of Sessions Case No.44 of 2006. The parties have also arrived at settlement in both the matters and they have been residing peacefully in the neighbourhood. The said aspect has been confirmed by the learned Additional Public Prosecutor on due verification from the concerned officer in-charge of the concerned Police Station in whose jurisdiction the said locality is situated.

9. This Court has taken into consideration the decision of the Apex Court rendered in the case of ***Narinder Singh and others v. State of Punjab***

and others[1]**,** wherein the High Court refused to exercise extraordinary jurisdiction under section 482 of the Code of Criminal Procedure. There was an amicable settlement arrived at by and between the parties. However, on the ground that section 307 of the Indian Penal Code was not compoundable offence in terms of section 320(9) of the Code of Criminal Procedure, referring to the decision of the Apex Court in the case of ***Rajendra Harakhchand Bhandari v. State of Maharashtra***[2]**,** the Court noted that the powers of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary power to refuse to compound the offence. However, compounding under Section 320(1) of the Code is permissible only in minor offences or in non-serious offences. When the parties reach

1 ***AIR 2014 SC (Supp.) 1839***

2 ***AIR 2011 SC 1821***

settlement in respect of offences enumerated in section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by the Apex Court in ***B. S. Joshi v. State of Haryana***[3]***,*** which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of. The Court referred to the decision of the Apex Court in the case of ***Gian Singh v. State of Punjab and others***[4]***,*** wherein the Apex Court held that the quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. The power of compounding of offences given to a court under Section 320 is

3 ***(2003) 4 SCC 675***
4 ***(2012) 10 SCC 303***

materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in section 320 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 offence or criminal proceeding or criminal complaint 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.

Apt would it be to regurgitate the relevant observations and findings of the Apex Court in the said decision, which read as under:

> *"31. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and*

quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

(I) Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

(II) When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any Court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

(III) Such a power is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

(IV) On the other, those criminal cases having overwhelmingly and pre-dominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

(V) While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

(VI) Offences under Section 307, IPC would fall in the category of heinous and serious offences and therefore is to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307, IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307, IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307, IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the later case it would be permissible for the High

Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

(VII) While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at

the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and come to a conclusion as to whether the offence under Section 307, IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307, IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

10. On the basis of these legal propositions, if one looks at the facts of the present case, of course, the case is registered under section 323, 504 and 337 read with section 114 of the Indian Penal Code and section 3(1)(x) of the Atrocities Act and the appellants have been convicted for the offences punishable under

sections 323, 504 and 337 read with section 114 of the Indian Penal Code and all the offences are compoundable offences. The parties have already arrived at an amicable settlement after both the sides having been convicted by the trial Court in cross-cases. In the wake of compoundability permitted under the law, the quashing is not impermissible. This Court deems it fit to hold that the period of punishment already undergone should be construed as sufficient.

11. For the foregoing reasons and in view of an amicable settlement arrived at by and between the parties and as the incident is of the year 2006, the appeal succeeds and the same is, accordingly, partly allowed. The impugned judgment and order of conviction is confirmed. The order of sentence dated November 04, 2006 rendered by the learned Special Judge, Fast Track Court No.1, Patan while dealing with Special Atrocity Case No.01 of 2006, qua all the offences i.e. sections 323, 504 and 337 read with section 114 of the Indian Penal Code, is

reduced and modified to the extent of period of imprisonment already undergone by them till date.

The appellants are on bail at present. Therefore, the bail bonds qua them stand discharged.

Direct Service is permitted.

(MS SONIA GOKANI, J)

Aakar