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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 13th OF APRIL, 2024

CRIMINAL APPEAL No. 1084 of 2024

BETWEEN:-

**SHRAVAN S/O SHANKARLAL MEHRA,
AGED ABOUT 27 YEARS,
OCCUPATION: DRIVER
R/O GUNNAS THANA KHATEGAON
DISTT. DEWAS (MADHYA PRADESH)**

.....APPELLANT

(SHRI AMIT KUMAR AGNIHOTRI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION JULWANIYA,
DISTRICT BARWANI (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI GAURAV RAWAT - DY. GOVT. ADVOCATE)

(SHRI LAVEESH SETHIA - ADVOCATE FOR RES./COMPLAINANT)

This appeal coming on for hearing this day, the court passed the following:

**ORDER
JUDGMENT**

1. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 27.12.2023, passed by learned 3rd Additional Sessions Judge, District Barwani (MP), in Sessions Trial No.154/2022, whereby the appellant has been convicted for the offence punishable under Sections 326, 307 of IPC and sentenced to undergo 07 years and 07 years R.I., with fine of Rs.2000/-, 2000/- and default stipulation.

2. Before this Court, both the parties have filed an application for compounding the offences. Since, there is cross-case both the parties have compromise the matter against each other.

3 . The said application was sent for verification before the Principal Registrar vide order dated 08.04.2024. In compliance to the said order, the appellant and complainant also appeared before the Principal Registrar. The compromise was verified and a report dated 08.04.2024 has been submitted that accused/appellants and the complainant have entered into compromise with mutual consent. There is no dispute remaining between the accused/appellant and the complainant. But as per the aforesaid report, the offence under Sections 326 & 307 of IPC are non-compoundable.

4. Counsel for the appellant submits that so far as sentence is concerned, the appellants have already undergone jail sentence of more than 5 and 1/2 **months** and the incident had taken place in the year 2022. Compromise has already been done between the parties and therefore, while maintaining the conviction, the jail sentence may be reduced to the period already undergone by enhancing the fine amount on the basis of compromise.

5. Learned counsel for the respondent/state has opposed the prayer. However, counsel for the objector has not objected and fairly admitted that they have compromised the case with the appellants.

6. Nevertheless, the appellant has not impugned the merits of conviction and confined their arguments as to sentencing of the appellant on the basis of compromise application, but still this appellate Court is of the view to examine the sanctity of conviction. Having gone through the record of the case it is found that in this case injured is only one person Amol Jain (P.W.1), however, in spite of that learned trial Court has convicted the appellant for offence under

Section 326 and 307 of PC and passed the punishment in both the sections. As per law when only one person has been injured charged can be framed only under grave section and conviction can also be passed only in grave section. In these conditions offence under Section 326 of IPC is not sustainable.

7. Here it is worth to reproduce the provisions of Section 222 of Cr.P.C, and relevant part of Section 71 of IPC hereunder:

When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

2. When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.

3. When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

4. Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied. Illustrations

(a) A is charged under Section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

(b). A. is charged, under Section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under Section 335 of that Code.

Likewise Section 71 of IPC mandates as under:

71. Punishment of offence made up of parts. - Where anything which is an offence is made up of parts, any of which parts is itself an offence of the same kind, the offender shall not, unless expressly so provided, be punished separately for such parts.

8. The confront reading of aforesaid provisions demonstrate that if the accused caused a grievous injury by a sharp weapon to injured with intention to

cause his death, the accused would be convicted for only 307 of IPC for attempt to murder but not for offence under 326 or 325 of IPC for the same injured. Hence, charge can be framed for 307 of IPC, but if attempt to murder is not established, he may be convicted for 326 or 325 of IPC or even 324 of IPC. In this case the offence of 307 of IPC is made out hence the appellant cannot be convicted for lesser offence of 326 of IPC.

9 . Now, the Court is turning to the sentencing part of non-compoundable offence under Section 307 of IPC and effect of compromise placed by the complainant/injured and accused persons. In the case of **Narinder Singh and Ors Vs. State of Punjab And Anr, 2014 (6) SCC 466** relying on the various judgments, the Apex Court permitted the compounding in a non-compoundable case and quashed the criminal proceedings. The Hon'ble Apex Court in para no.21 has observed as under:-

"21. However, we have some other cases decided by this Court commenting upon the nature of offence under Section 307 of IPC. In **Dimpey Gujral case (supra)**, FIR was lodged under sections 147,148,149,323,307,552 and 506 of the IPC. The matter was investigated and final report was presented to the Court under Section 173 of the Cr.P.C. The trial court had even framed the charges. At that stage, settlement was arrived at between parties. The court accepted the settlement and quashed the proceedings, relying upon the earlier judgment of this Court in **Gian Singh vs. State of Punjab & Anr. 2012 AIR SCW 5333** wherein the court had observed that inherent powers under section 482 of the Code are of wide plentitude with no statutory limitation and the guiding factors are: (1) to secure the needs of justice, or (2) to prevent abuse of process of the court. While doing so, commenting upon the offences stated in the FIR, the court observed:

“Since the offences involved in this case are of a personal nature and are not offences against the society, we had enquired with learned counsel appearing for the

parties whether there is any possibility of a settlement. We are happy to note that due to efforts made by learned counsel, parties have seen reason and have entered into a compromise." This Court, thus, treated such offences including one under section 307, IPC were of a personal nature and not offences against the society."

10. Here, it is also poignant that this compromise has been filed at the stage of appeal before this Court. On this aspect, the law laid down by Hon'ble Apex Court in the case of **Ishwar Singh vs. State of Madhya Pradesh [AIR 2009 SC 675]** is worth to be quoted here as under:

"15. 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 circumstances which, the Court may keep in mind."

11. On this point, the view of Hon'ble Apex Court in the **Unnikrishnan alias Unnikuttan versus State of Kerala reported in AIR 2017 Supreme Court 1745** is also worth referring in the context of this case as under:-

"10. In series of decisions i.e. **Bharath Singh vs. State of M.P. and Ors., 1990 (Supp) SCC 62, Ramlal vs. State of J & K, (1999) 2 SCC 213, Puttaswamy vs. State of Karnataka and Anr, (2009) 1 SCC 71 1**, this Court allowed the parties to compound the offence even though the offence is a non-compoundable depending on the facts and circumstances of each case. In some cases this Court while imposing the fine amount reduced the sentence to the period already undergone."

11. What emerges from the above is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrive at between the parties, reduce the sentence imposed while maintaining the conviction."

12. Even this Court in Cr.A. No.268/2016 (**Kanha @ Mahesh v/s The State of Madhya Pradesh**) decided on 26.08.2017 as well as in Cr.A. No.561/2010 (**Radhakrishnan & 3 Others v/s The State of Madhya Pradesh**) decided on 18.04.2017 and in CRA No.604/2000 (**Aaram singh vs. The State of Madhya Pradesh**) decided on 08.08.2019, **Sohan Jangu & others vs. State of Madhya Pradesh** reported as **2023 Lawsuit (M.P) 392**, **Kanhaiyalal & Ors. vs. State of M.P.** reported as **2023 Lawsuit (M.P) 509**, **Devendra Snigh vs. State of M.P.** reported in **2023 Lawsuit (M.P) 781** has taken a similar view.

13. On this point, this Court is also inclined to quote the excerpt of the judgment rendered by Hon'ble Apex Court in the case of **Bhagwan Narayan Gaikwad vs. State of Maharashtra; [2021 (4) Crimes 42 (SC)]** which is as under:-

"28. Giving punishment to the wrongdoer is the heart of the criminal delivery system, but we do not find any legislative or judicially laid down guidelines to assess the trial Court in meeting out the just punishment to the accused facing trial before it after he is held guilty of the charges. Nonetheless, if one goes through the decisions of this Court, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation, etc.

29. The compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand."

14. As the offence under Section 307 of the Indian Penal Code are not compoundable under Section 320 of the Code of Criminal Procedure, 1973, it is not possible to pass the order of acquittal on the basis of compromise but, it is by now well settled that such a compromise can be taken into account for reduction of sentence. The appellant and the complainant are living in the same society, they are residing happily since last so many years, they want to live with peace, and therefore, to meet the ends of justice, the sentence of imprisonment awarded against the appellants may be reduced to the period already undergone.

15. In view of the aforesaid principles laid down by Hon'ble Apex Court and by this Court taking into consideration that the incident had taken place in the year 2022 and further the appellant has already undergone jail sentence of **approximately five and half Months** and no fruitful purpose would be served in keeping the appellants in jail even after the compromise between the parties, this Court is of the view that while maintaining the conviction under sections 307 of IPC, the jail sentence under these offences is reduced to the period already undergone by enhancing fine amount from Rs.2,000/- to Rs.10000/-.

16. In case, if the appellant fails to deposit the aforesaid enhanced fine amount, he shall suffer 3 months S.I.

17. The amount of fine if already deposited, shall be adjusted.

18. The appellant is in jail. After depositing the fine amount, he be set at liberty forthwith immediately if not required in jail in any other case. Subject to depositing the fine amount, his bail bond if any stands discharged.

19. The judgment of learned trial Court regarding seized property stands confirmed.

20. A copy of this order be sent to the trial Court concerned for

necessary compliance.

21. Pending application, if any shall be closed.

22. With the aforesaid, the present appeal stands disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

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