

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ**

ON THE 3rd JULY, 2025

**CRIMINAL APPEAL NO. 5640 OF 2024
BANTI KANSANA @ KESHAV**

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Ravi Dwivedi- Advocate for appellant.

Shri Pooran Kulshrestha- Additional Advocate General for respondent/State.

Ms. Kajal Tundelkar- Advocate for complainant.

JUDGMENT

Per Hirdesh, J:

The instant Criminal Appeal under Section 374 (2) of Cr.P.C has been preferred by appellant being aggrieved by the judgment dated 13.04.2024 passed by Tenth Additional Sessions Judge, Gwalior in Sessions Trial No. 13 of 2022 whereby, appellant has been convicted under Section 307 of IPC and sentenced to undergo Life Imprisonment with fine of Rs.10,000/- and further sentenced to undergo two years' rigorous imprisonment under Section 25(1-B)(a) of the Arms Act with fine of Rs.500/- and u/S.27 of Arms Act, three years' rigorous imprisonment with fine of Rs.500/- with default stipulations respectively. All the sentences have been directed to run concurrently.

(2) In nutshell, case of prosecution is that on 04.11.2021, Rishab Chaurasiya (PW-1) gave oral information to Police Station Madhoganj,

Gwalior that on 03.11.2021 around 10.30 in the night, his brother Pankaj Prahalad Pal was making sweets along-with Bhola Tomar and Hari Singh. At that time, present appellant- accused Banti came there and asked for beer to him. When he refused, accused Banti started abusing him in filthy language and also slapped him. After 10 minutes, appellant came with a country made gun (*katta*) and again started abusing him. When he objected, accused Banti with an intention to kill fired a gun shot on him. Bullet hit near his left ribs causing him to fell down. On screaming, the shop owner's nephew- Sunil came and took Pankaj to hospital for his treatment. On such allegations, Police Station Madhoganj registered FIR at Crime No.478/2021 for offence punishable under Sections 294 and 307 of IPC. During investigation, statements of the witnesses were recorded. Relevant seizures were made. Accused was arrested. One country-made gun was seized at the instance of present appellant. Thereafter, offence punishable under Sections 25 & 27 of Arms Act was enhanced. Charge-sheet was filed and case was committed to the Court of Sessions for trial.

(3) The trial Court framed charges. Appellant abjured guilt and pleaded for innocence. Thereafter, the trial Court took evidence of prosecution and defence and after hearing arguments of both the parties, convicted and sentenced appellant for the alleged offences, as stated above in Para 1 of his judgment.

(4) Being dissatisfied with the impugned judgment of conviction and order of sentence, appellant has filed instant appeal on various grounds.

(5) On behalf of appellant and complainant I.A.No.17216 of 2024 & I.A.No.17217 of 2024, applications under Section 320(1) of CrPC and 320(2) of CrPC have been filed for compounding of offences on the basis of compromise.

(6) In compliance of order dated 09.04.2025, this Court had directed both the parties to appear and ink down their identity and intent for compromise before the Principal Registrar of this Court on 24.01.2025. The Principal Registrar was also directed to use video Conferencing/ electronic mode to verify factum of compromise from accused. The compromise was verified and a report has been submitted by Principal Registrar on 01.05.2025 that appellant/accused and complainant Rishab Chaurasiya (PW-1) & injured Pankaj Chaurasiya (PW-2) have entered into compromise with mutual consent. Now, there is no dispute remaining between them. But, as per aforesaid report, offence under Section 307 of IPC is non-compoundable.

(7) Learned Counsel for appellant submitted that so far as sentence is concerned, appellant has already undergone jail sentence from 04.11.2024 to 16.06.2022 and further, from the date of judgment i.e. 13.04.2024, he is in jail till today (total custody period almost one year and ten months). It is submitted that since compromise has been arrived at between the parties, therefore, the jail sentence as awarded by Trial Court may be reduced to the period already undergone by enhancing fine amount on the basis of compromise.

(8) Learned counsel for respondent/State has opposed the prayer of appellant, however, the learned counsel for complainant has no objection and fairly admitted that they have entered into compromise in the case with appellant.

(9) Nevertheless, the appellant has not challenged the merits of case in regard to conviction and only confined his argument to quantum of sentence as regards sentencing appellant on the basis of compromise but still, this Appellate Court is of the view to examine sanctity of conviction. On this aspect, we have gone through the judgment of trial Court. The prosecution

case is not only fortified by eye-witnesses including injured, but also well-supported by medical evidence and documentary evidence adduced before Trial Court. In view of evidence produced by prosecution, conclusion of the trial Court regarding conviction appears to be sound-reasoning, therefore, it does not warrant any inference. Accordingly, finding with regard to conviction under Section 307 of IPC and under the Arms Act is hereby confirmed.

(10) Now, the Court is turning to sentence part of non-compoundable offence under Section 307 of IPC and the effect of compromise placed by parties.

(11) Relying on various judgments, the Hon'ble Supreme Court in the matter of *Narinder Singh and Ors Vs. State of Punjab and Anr, 2014 (6) SCC 466* 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."

(12) 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 the 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."

(13) On this point, the view of the Hon'ble Apex Court in the case of *Unnikrishnan alias Unnikuttan versus State of Kerala 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 noncompoundable 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."

(14) 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* passed in *CRA No.550/2023 on 11.07.2023*, has taken a similar view.

(15) On this point, this Court is also inclined to quote extract of the

judgment rendered by the 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 assist the trial Court in meting 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 6 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."

(16) As the offence under Sections 307 of IPC is non-compoundable under Section 320 of CrPC, it is not possible to pass judgment 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. So far as conviction of appellant under Sections 25(1-B)(a) and 27 of Arms Act is concerned, minimum sentence is prescribed for one year.

(17) In view of aforesaid principles laid down by the Apex Court, since appellant has already undergone jail sentence of approximately one year and ten months, no fruitful purpose would be served in keeping the appellant in jail further even after the compromise arrived at between the parties. Therefore, while maintaining conviction under Section 307 of IPC and Sections 25(1-B)(a) and 27 of Arms Act, the jail sentence awarded by Trial Court is reduced to the period already undergone by enhancing the fine amount to the tune of Rs.1,50,000/-. On adjustment of fine amount imposed

by trial Court (if fine amount is deposited), **Rs.50,000/-** shall be deposited **in favour of Juvenile Justice Fund having Saving Bank Account No.60411029562 of Bank of Maharashtra, Branch Govindpura, Bhopal, IFSC Code MAHB0001988 (a statutory fund created for the welfare of juveniles), Rs.50,000/-** shall be deposited with **High Court Legal Services Committee, Gwalior** and remaining amount of **Rs.50,000/-** shall be given to **injured victim Pankaj Chaurasiya (PW-2)** as compensation. Aforesaid enhanced fine amount shall be deposited within a period of **two months** from today.

(18) Appellant is reported to be in jail. Subject to deposit of enhanced fine amount, appellant shall be released from concerned jail if he is not required in any other offence. In case, appellant fails to deposit the enhanced fine amount within the aforesaid stipulated period of two months, he shall undergo further six months' additional imprisonment as awarded by Trial Court.

(19) In view of aforesaid modification, instant appeal stands **disposed of**.

(20) A copy of this judgment along-with record be sent to Trial Court concerned as well as a copy of this judgment be sent to the Jail Authority concerned for necessary information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE