

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

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

**CRIMINAL APPEAL No. 1090 of 2019**

**BETWEEN:-**

1. PRAKASH S/O BALURAM BAWRI, AGED ABOUT 23 YEARS, SARVANIYA MASANI, DISTT. NEEMUCH (MADHYA PRADESH)
2. RAJESH@RAJU S/O BALURAM BAVARI, AGED ABOUT 27 YEARS, SARVANIYA MASANI (MADHYA PRADESH)
3. BALURAM@BALU S/O KISHANLAL BAVARI, AGED ABOUT 50 YEARS, SARVANIYA MASANI, DISTT. NEEMUCH (MADHYA PRADESH)

.....APPELLANT

(BY SHRI SANTOSH KUMAR MEENA, ADVOCATE )

**AND**

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU. P.S. JAWAD, DISTT. NEEMUCH (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI RAJESH JOSHI, GA FOR STATE )

*Reserved on: 18.01.2024*

*Delivered on: 19.01.2024*

*This appeal having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following:*

**JUDGEMENT**

This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 08.01.2019, passed by ASJ,

Jawad, District Neemuch (M.P.), in S.T. No.73/20154, whereby each appellant has been convicted for the offence punishable under Section 365 of IPC and sentenced to undergo 6-6 Months R.I. with fine of Rs.3000/- each with default stipulations.

2. As per the case of prosecution, on 13.05.2015 at about 11PM in the night, the appellants have kidnapped the complainant. Hence, the missing person report was lodged and thereafter, during the investigation, it is found that the appellants have kidnapped the complainant. Hence, offence was registered against the appellants.

3. During investigation, spot map was prepared, seizure memos were prepared and statements of the witnesses were recorded. After completion of investigation, charge-sheet was filed under Section , 365/34, 342, 323 and 506 of IPC.

4. The appellants abjured their guilt and they took a plea that they are innocent.

5. After analyzing the prosecution evidence and considering the rival submissions, the Trial Court has acquitted the appellants under Section 342, 323 and 506 of the Act and whereas convicted them only under Section 365/34 of IPC by sentencing for 6-6 months each.

6 . Counsel for the appellants submits the appellants and the complainant has already compromised the case and the application under Section 320 of Cr.P.C was filed before the trial Court, but the same was not considered and the appellants were convicted. It is further submitted that there is no minimum sentence prescribed under Section 365 of IPC and prays that the sentence of the appellants may be reduced to the period already undergone because the appellant Prakash has suffered 10 days and Rajesh and Baluram

have suffered 7-7 days respectively out of six months and the fine amount may be enhanced or as the Court may deem fits in the interest of justice as the incident had taken place in the year 2015.

7 . Learned counsel for the respondent/state submits that the offence under sections 365 of IPC is non-compoundable, therefore, the offence cannot be compounded under section 320 of the Cr.P.C

8 . Nevertheless, the appellants have not impugned the merits of conviction and confined their arguments as to sentencing of the appellants on the basis of compromise application, but still this appellate Court is of the view to examine the sanctity of conviction. On this aspect, I have gone through the order of the trial Court. The prosecution case is not only fortified by the eye-witnesses but also well supported by documentary evidence adduced before the trial Court. In view of the whole evidence produced by the prosecution, conclusion of learned trial Court regarding conviction is appears to be on sound reasoning, it does not warrant any interference. Accordingly, this finding with regard to conviction under Section 365 of IPC, is hereby affirmed.

9 . Now, the Court is turning to the sentencing part and effect of compromise placed by the complainant/injured and accused person regarding the conviction under Section 365 of IPC. 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 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 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 711**, 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."

11. 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.

12. On this point, this Court is also 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."

13. As the offence under Section 365 of the Indian Penal Code is 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 when the offence is of personal in nature and not affecting the society at large. The appellants 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 for a period of already undergone. Hence, in the interest of justice the appellants may awarded sentence till the rising of the Court by enhancing the fine amount of Rs.6000/- in place of Rs.3000/- payable by each of the appellants within a period of two months from today.

14. 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 2017 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 365 of IPC, the jail sentence under this offence is reduced to the period already undergone on the basis of compromise arrived at between the parties.

15. The appellants are directed to deposit the enhanced fine of Rs.6000/- within two months from today. The bail bond of the appellants shall be discharged after depositing enhanced fine amount. In case of default of payment of fine amount, the appellants shall undergo actual jail sentence as awarded by the learned trial Court.

16. The fine amount if already deposited by the appellants shall be adjusted.

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

18. A copy of this order be sent to the trial Court concerned for necessary compliance.

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

Pending application, if any stands closed.

Certified copy, as per rules.

**(PREM NARAYAN SINGH)**  
**JUDGE**