

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

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

ON THE 17th OF JULY, 2023

CRIMINAL APPEAL No. 1031 of 2023

BETWEEN:-

1. MURLI S/O LALJI, AGED ABOUT 24 YEARS, OCCUPATION: LABOR R/O GRAM BHAGORA THANA KISHANGANJ TEHSIL MHOW INDORE (MADHYA PRADESH)
2. ISHWAR S/O LALJI BHEEL, AGED ABOUT 27 YEARS, OCCUPATION: LABOUER VILLAGE BHGOURA, P.S. KISHANGANJ TEHSIL MHOW, DISTRICT INDORE (MADHYA PRADESH)
3. KAMAL S/O LALJI BHEEL, AGED ABOUT 26 YEARS, OCCUPATION: LABOUER VILLAGE BHAGOURATEHSIL MHOW, DISTRICT INDORE (MADHYA PRADESH)
4. MEHARBAN S/O LALJI BHEEL, AGED ABOUT 19 YEARS, OCCUPATION: LABOURER VILLAGE BHAGOURATEHSIL MHOW, DISTRICT INDORE (MADHYA PRADESH)
5. LALJI S/O BHAAGIRATH BHEEL, AGED ABOUT 55 YEARS, OCCUPATION: LABOUER VILLAGE BHAGOURATEHSIL MHOW, DISTRICT INDORE (MADHYA PRADESH)

.....APPELLANT

(SHRI SANJAY KUMAR SHARMA, LEARNED COUNSEL FOR THE APPELLANTS)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION KISHANGANJ
DISTRICT INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI GAURAV RAWAT APPEARING ON BEHALF OF ADVOCATE
GENERAL/STATE & SHRI MOHAMMAD IKRAM ANSARI, LEARNED***

This appeal coming on for orders this day, heard with the consent of parties and the court passed the following:

JUDGMENT

The present appeal is filed against the judgment of conviction and sentence dated 29.12.2022 passed by the 5th Additional Sessions Judge, Ambedkar Nagar Indore in Sessions Trial No.352/2016, whereby, the appellants have been convicted under sections 148, 307/149, 450 of IPC and sentenced to undergo 1 year, 10 years and 03 years for each offences with fine of Rs.500, 1000/- and 500/- for each offences respectively with default stipulations.

2. As per the prosecution case, the appellants had caused fatal injury to injured. The appellants and the complainants filed an application for compounding the offences, as I.A.No.6166/2023.

3. The said application was sent for verification before the Principal Registrar of the Court. In compliance to the said order, the appellants were produced before the Principal Registrar in Escort and complainants also appeared before the Principal Registrar. The compromise was verified and a report has been submitted that accused/appellants and the complainants have entered into compromise with mutual consent. There is no dispute remaining between the accused/appellants and the complainants.

4. Counsel for the appellants submits that so far as sentence is concerned, the appellants have already undergone jail sentence approximately one year each and the incident had taken place in the year 2016. The offences under sections 148, 307/149, 450 of IPC has already been compromised with the victim/complainants and therefore, while maintaining the conviction, the jail sentence may be reduced to the period already undergone and the fine amount

may be reasonably enhanced which may be directed to be paid to the complainant/injured.

5. Learned counsel for the respondent/state submits that the offence under sections 148, 307/149, 450 of IPC are non-compoundable, therefore, the offence cannot be compounded under section 320 of the Cr.P.C.

6. 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 including the injured Shersingh (PW-11), but also well supported by medical testimony and 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 reasonings, it does not warrant any interference. Accordingly, this finding with regard to conviction under Section 148, 307/149, 450 of IPC, is hereby affirmed.

7. Now, the Court is turning to the sentencing part 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.”

सत्यमेव जयते

8. 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."

9. 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.

10. 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."

11. As the offence under Section 307 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. 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 to the period already undergone

12. 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 2016 and further the appellants have already undergone jail sentence of approximately one year each 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 148,

307/149, 450 of IPC, the jail sentence under these offences is reduced to the period already undergone and fine amount of Rs.1000/- is also enhanced to Rs.10000/- under Section 307 of IPC, each. The fine amount under sections 148, and 450 of IPC also stands confirmed. The fine amount, if already deposited, shall be adjusted.

13. The appellants are in custody. They shall be released forthwith, if not required in any other case in jail, upon depositing the aforesaid enhanced fine amount within a period of one week from today.

14. In case, if the appellants fail to deposit the aforesaid enhanced fine amount within stipulated period, they shall suffer 3-3 months S.I. each.

15. Out of the fine amount so recovered/deposited, Rs.20000/- be paid to injured- Sher Singh (PW-11).

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

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

With the aforesaid, the present appeal stands disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

amit