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

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

ON THE 22nd OF DECEMBER, 2023

CRIMINAL APPEAL No. 1806 of 2023

BETWEEN:-

1. **GOVIND SINGH S/O GAJRAJ SINGH RAJPUT,
AGED ABOUT 21 YEARS, OCCUPATION:
AGRICULTURIST VILLAGE BOHRAKHEDI P.S. NAI
ABADI DISTRICT MANDSAUR (MADHYA
PRADESH)**
2. **PURAN SINGH S/O GAJRAJ SINGH RAJPUT, AGED
ABOUT 26 YEARS, OCCUPATION: AGRICULTURIST
R/O VILLAGE BOHRAKHEDI, PS NAI ABADI
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI NILESH DAVE, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
NAI ABADI DISTRICT MANDSAUR (MADHYA
PRADESH)**
2. **DILIP AHIRWAR S/O KANHAIYALAL, AGED
ABOUT 29 YEARS, OCCUPATION: LABOURER R/O-
VILLAGE BOHRAKHEDI, P.S- NAI ABADI
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RAJESH JOSHI, GA FOR STATE)

Reserved on :13.12.2023

Delivered on :22.12.2023

This appeal was heard and the court pronounced the following:

JUDGMENT

The present appeal is filed against the judgment conviction and sentence

dated 22.12.2022, passed by Special Judge, Mandsaur in Sessions Trial No.79/2017, whereby, the appellants have been convicted under sections 459 & 307/34 of IPC and sentenced to undergo 5-5 years of R.I. (each) with fine of Rs.2000/- for each offence respectively with default stipulations.

2. Before this Court, both the parties have filed an application for compounding the offences.

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 dated 30.11.2023 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 appellant submits that so far as sentence is concerned, the appellants have already undergone jail sentence of one year approximately. The incident had taken place in the year 2017. It is further submitted that both the parties have amicably settled their dispute and therefore, while maintaining the conviction, the jail sentence of the appellants 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.

5. Learned counsel for the respondent/state has opposed the appeal.

6. Looking to the fact that both the parties have entered into compromise. 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 statement of the 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 appears to be on sound reasoning, it does not warrant any interference. Accordingly, this finding with regard to conviction under Sections 459 and 307 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 person. 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."

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 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 459 & 307 of IPC, 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 since the offences involved in this case are of personal nature and are not against the society, 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 and they want to live with peace, therefore, to meet the ends of justice, the sentence of imprisonment awarded against the appellant under Section 459 & 307 of IPC 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 2017 and further the appellants have already undergone jail sentence of approximately one years of their jail incarceration, 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 459 & 307 of IPC, the jail sentence under this offence is reduced to the period already undergone by enhancing the fine amount from Rs.2000/- to Rs.10,000/ (under Section 459 of IPC) & from Rs.2000/- to Rs.10,000/ (under Section 307 of IPC) - each for payable within a period of one month from today. Out of the total fine amount Rs.10,000/- be paid to complainant Jitendra. Fine amount and compensation already paid, if any, shall be adjusted. The bail bond of the appellants shall be discharged after depositing the compensation amount. In case of default of payment of fine amount, the

appellants shall undergo further 3-3 months S.I.

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

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

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

18. Pending application, if any, stands closed.

C.C. as per rules.

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(PREM NARAYAN SINGH)
JUDGE