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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 858/2015

SANJAY @ SONU

..... Appellant

Through: Mr.Lokesh Kumar Misra,
Mr.Gaurav Mittal & Mr.Sameer
Ojha, Advocates

versus

STATE

..... Respondent

Through: Ms.Rajni Gupta, APP for the State
with SI Mousam Ghani PS Mayur
Vihar

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

08.03.2016

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CRL.A. 858/2015

1. The appellant has preferred the present appeal under Section 374 Cr.P.C. against judgment dated 12th August, 2014 and order on sentence dated 14th August, 2014 passed by the learned Addl. Sessions Judge in Sessions Case No.6/2012 whereby he has been convicted for committing the offence punishable under 307 IPC and under Section 25 of the Arms Act and sentenced to undergo RI for five years with fine of ₹ 10,000/- for the offence punishable under Section 307 IPC and further to undergo RI for three years with fine of ₹ 5,000/- and both the sentences were ordered to be run concurrently.

2. In brief the case of prosecution is that on 2nd October, 2011

complainant Sonu alongwith his two friends namely, Kallu @ Jaiprakash & Sanjay came to Delhi. They hired a rickshaw at Dallupura village. At about 4.30 p.m. when they reached 31-31 block Trilokpuri Chowk near Gurudwara, a young boy aged about 22-23 years came on a black colour motorcycle and told them as to why they had come there. That boy told Sanjay *“tune kuch din pahale jhagda kiya tha tu aaj phir yahan apne sathion ke sath aya hai”*. Sanjay told him *“bhai maine tere sath koi jhagda nahin kiya tha aap galat soch rahe hain”*. On hearing this, the said boy brought out a sharp edged weapon and attacked on Sanjay, due to which Sanjay started bleeding and ran away from the spot due to fear. Thereafter he stabbed on the left side chest of Sonu and then fled away on his motorcycle. Sonu was removed to the hospital by his friend Kallu @ jaiprakash. Matter was reported to the police. On the basis of above statement made by complainant Sonu recorded by the police in the hospital, FIR No.223/11 under Sections 307/341/506 IPC and Under Sections 25/27 Arms Act has been registered at PS Mayur Vihar. During investigation, accused Sanjay @ Sonu was arrested and on his pointing out, weapon of offence i.e. knife has been recovered and seized. After completion of investigation, chargesheet was filed against the appellant for the offences complained of.

3. On the basis of evidence adduced by the prosecution, the learned Trial Court held the appellant guilty under Section 307 IPC and under section 25 of Arms Act and sentenced him in the manner aforesaid.

4. Feeling aggrieved from his conviction and sentence awarded to him, the appellant has preferred this appeal.

5. Learned counsel for the appellant submits that as per instructions

received, the appellant is not challenging his conviction, however, prayer has been made to take a lenient view on the point of sentence by reducing the sentence to the period already undergone by him in this case.

6. Learned counsel for the appellant has submitted that matter has also been resolved amicably by the appellant with the injured persons and the appellant has also given ₹10,000/- to complainant Sanjay Singh – respondent No.3 wherein which fact is recorded in the proceedings dated 15.02.2016. Learned counsel for the appellant has further submitted that a compensation of ₹ 15,000/- has also been given to injured Sonu @ Manoj Kumar by the appellant. Learned counsel for the appellant has prayed for leniency on the point of sentence submitting that the appellant has already undergone about three years in judicial custody in this case.

7. Today respondent No.2 Sonu @ Manoj Kumar is present in person. Respondent No.2 also affirms the factum of amicable settlement with the appellant.

8. Leaned APP for State has submitted that since the parties have compounded the matter and injured persons have also received the compensation from the appellant, appropriate orders may be passed in the matter in view of the judgment of Apex Court in ***Gulab Das & Ors. vs. State of M.P. AIR 2013 Supreme Court 888.***

9. In ***Gulab Das & Ors. Vs. State of M.P.*** (Supra), the appellant No.1 Gulab Das, Appellant No.2 Chetan were sentenced to undergo imprisonment for a period of one month under Section 323 IPC. However, appellant No.2 Chetan was further sentenced to undergo rigorous imprisonment for a period of three years and a fine of ₹ 500/- under Section 307 IPC. All the appellants challenged their conviction before the High Court of Madhya Pradesh at

Jabalpur which failed. Thereafter SLP was filed in the Supreme Court.

10. During the pendency of appeal before the Supreme Court, the appellants and the complainant arrived at an amicable settlement and prayed for compounding of the offence. While disposing of the appeal, the Apex Court, though declined the prayer for compounding the offence as the offence was non-compoundable, maintained the conviction of the appellants but reduced the sentence to the period already undergone by the appellants in view of compromise arrived at between the parties. The legal position in such a situation has been discussed in paras 7, 8 and 9 of the said decision and reproduced as under:-

“7. In the light of the submissions made at the bar the only question that falls for determination is whether the prayer for composition of the offence under Section 307 IPC could be allowed having regard to the compromise arrived between the parties. Our answer is in the negative. This Court has in a long line of decisions ruled that offences which are not compoundable under Section 320 of the Cr.P.C. cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other. Reference in this regard may be made to the decisions of this Court in Ram Lal and Anr. vs. State of J & K (1999) 2 SCC 213: (AIR 1999 SC 895), and Ishwar Singh v. State of Madhya Pradesh (2008) 15 SCC 667: (AIR 2009 SC 675). We have, therefore, no hesitation in rejecting the prayer for permission to compound the offence for which Appellant Nos. 2 and 3 stand convicted.

8. Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the quantum of sentence. Apart from the fact that a settlement has taken

place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant Nos.2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross-case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of ₹ 300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High Court for an appropriate order in the appeal pending before it. Moreso, the appellants have already served substantial part of the sentence awarded to them.

9. In the totality of the circumstances we are of the view that the settlement arrived at between the parties is a sensible step that will benefit the parties, give quietus to the controversy and rehabilitate and normalize the relationship between them.”

11. In the case in hand, the appellant has been convicted for committing the offence punishable under Section 307 IPC and under Section 25 Arms Act and sentenced to undergo RI for five years with fine of ₹ 10,000/- for the offence punishable under Section 307 IPC and further to undergo RI for three years with fine of ₹ 5,000/-.

12. As per nominal roll of the appellant available on record, as on 02.10.2015, he has spent one year, eleven months and four days in judicial custody in this case, meaning thereby as on date, he has undergone about two years and four months out of the total sentence of five years. Perusal of nominal roll also reveals that he has earned remission of four months and four days.

13. Considering the facts and circumstances of the case, while upholding

the conviction of the appellant, **the substantive sentence awarded to the appellant for committing the offence punishable under Section 307 IPC is reduced to three years to be run concurrently with the sentence awarded to the appellant for committing the offence punishable under Section 25 Arms Act.**

14. It is made clear that the modification is only in respect of the substantive sentence awarded to the appellant under Section 307 IPC, which is reduced to three years, however, the sentence of fine of ₹ 10,000/- is maintained.

15. The impugned order on sentence dated 14.08.2014 is modified to the aforesaid extent. The appeal is partially allowed.

16. A copy of the order be sent concerned Jail Superintendent for information and compliance.

Copy of the order be also sent to the learned Trial Court and be given dasti to learned counsel for the appellant under the signature of Court Master.

CRL.M.B.7513/2015

Dismissed as infructuous.

PRATIBHA RANI, J.

MARCH 08, 2016

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