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

+ CRL.A. 330/2015 & CRL.M.A.No.4701/2016

GURDEEP SINGH @ DEEPA & ANR Appellants
Through: Mr.Avtar Singh, Advocate

versus

STATE (NCT OF DELHI) Respondent
Through: Ms.Rajni Gupta, APP for the State
with SI Dinesh Kumar PS Nihal
Vihar

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
31.03.2016

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1. Learned counsel for the appellants, on instructions, submits that in view of the fact that the appellants have compounded the matter with the injured Ajit Singh and Manmohan Singh and they are not challenging their conviction and only pray for taking a lenient view on the point of sentence
2. The present appeal has been preferred by the appellants against the judgment dated 7th January, 2015 and order on sentence dated 12th January, 2015 whereby they have been convicted for committing the offence punishable under Sections 308/323/325/341/509/34 IPC and sentenced as under:-

- (i) Under Section 308/34 IPC R.I. for a period of four years with fine of ₹ 10,000/- each and in default, to undergo SI for one month each
- (ii) Under Section 323/34 IPC R.I. for a period of six months with fine of ₹500/- each and in default, to undergo SI for 7 days each
- (iii) Under Section 325/34 IPC R.I. for a period of three years with fine of ₹5,000/- each and in default, to undergo SI for 15 days each
- (iv) Under Section 341/34 IPC R.I. for a period of three months with fine of ₹200/- each and in default, to undergo SI for 3 days each
- (v) Under Section 509/34 IPC R.I. for a period of one year with fine of ₹1,000/- each and in default, to undergo SI for 10 days each

All the sentenced awarded to the appellants were ordered to be run concurrently with benefit under Section 428 Cr.P.C.

3. Briefly stating, the facts of the present case are that on 25th September, 2010 at 10.45 p.m., when the complainant/injured Ajit was coming back to his house along with his sister from Tilak Nagar, the appellants, who were already present near to their house, started obscene talk with his sister and started misbehaving. When the complainant objected they started beating him and in the meanwhile, his sister ran away from there and called her father, who also reached there to save the complainant. Thereafter, both the appellants gave beatings to the complainant and his father with legs and danda blow. The matter was reported to Police Control Room. Police came at the spot and took the complainant and his father to SGM hospital where both of them were admitted. Later

father of the complainant was admitted in AIIMS J.P.N. Trauma Centre. On completion of investigation, charge-sheet was submitted in the Court.

4. On the basis of material placed on record by the prosecution, the appellants were charged for the offence punishable under Sections 308/323/325/341/509/34 IPC to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution has examined twelve witnesses. After concluding the trial, the learned ASJ found the appellants guilty of the offences punishable under Section 323/325/308/341/509/34 IPC and sentenced them in the manner aforesaid. Feeling aggrieved by their conviction and sentence, the appellants preferred this appeal.

6. Learned counsel for the appellants submits that during the pendency of the appeal the appellants have compounded the matter with the injured due to intervention of respectable persons of the area and in terms of settlement they have agreed to pay a sum of ₹ 1,00,000/- to the complainant/injured towards the cost of treatment and injuries sustained by them.

7. Learned counsel for the appellants submits that the appellants have undergone almost one year three months in judicial custody. He further submits that the appellants are not challenging their conviction and a lenient view may be taken on the point of sentence. Mr.Avtar Singh, learned counsel for the appellants further submits that today in the Court also ₹1,10,000/- has been paid to the injured which includes ₹ 1,00,000/- towards costs of treatment and ₹ 10,000/- out of the fine of ₹ 5,000/- imposed on each accused punishable for the offence under Section 325/34 IPC.

8. Complainant/Injured Mr.Ajit Singh and his father Manmohan Singh

are present in person and submit that a compensation of ₹1,10,000/- has been received by them today from the appellants. They further submit that they have compounded the matter with the appellants due to intervention of respectable persons of the locality and now they have no grudge against the appellants and they do not want the appellants to remain in jail and they may be directed to be released.

9. Leaned APP for State has submitted that since the parties have compounded the matter, 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.**

10. 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.

11. 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 Rs.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.”

12. Perusal of the nominal roll of the appellants reveal that as on 21st March, 2016 the appellants have undergone one year two months and thirteen days out of the total sentence of four years.

13. Considering the circumstances in which the quarrel between the injured and the appellants took place and the weapon of an offence i.e. danda, while upholding the conviction of the appellants, the substantive sentences awarded to them is reduced to the period already undergone by them.

14. The appellants have been directed to pay total fine of ₹ 33,400/- for the offence punishable under Sections 308/323/325/341/509/34 IPC. The fine of ₹ 5,000/- each imposed on the appellants for the offence punishable under Section 325/34 IPC is directed to be paid as compensation to both the injured and has been paid today in the Court. The fine imposed under Sections 308/323/341/509/34 IPC shall be deposited by the appellants if not already paid.

15. The impugned order on sentence dated 12th January, 2015 passed by the learned ASJ is modified to the aforesaid extent. The appeal is partially allowed. The appellant be released forthwith if not wanted in any other case.

16. Crl.A.No.330/2015 and Crl. M.A. 4701/2016 stand disposed of accordingly.

17. A copy of the order be sent to the Jail Superintendent for information and compliance.
18. TCR be returned along with the copy of order.
19. Copy of the order be also given dasti to learned counsel for the appellants under the signature of Court Master.

PRATIBHA RANI, J.

MARCH 31, 2016

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