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

+ CRL.A. 1082/2015

ASHRAF

..... Appellant

Through: Mr.R.P.Luthra, Advocate with  
Appellant who is produced from J/C.

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP for the  
State.

**CORAM:**

**HON'BLE MS. JUSTICE PRATIBHA RANI**

**ORDER**

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**02.03.2016**

**Crl.M.B.No.7967/2015**

1. Learned counsel for the appellant, on instructions, submits that he does not press this application if the appeal is heard in view of the fact that the appellant has compounded the matter with the injured Anil Yadav and he is not challenging his conviction and only prays for taking a lenient view on the point of sentence.

2. In view of the submissions made by learned counsel for the appellant, the application is dismissed as not pressed.

**Crl.A. No.1082/2015**

1. The present appeal has been preferred by the appellant against the judgment dated 22.09.2015 and order on sentence dated 23.09.2015 whereby he has been convicted for committing the offence punishable under Section 307 IPC and sentenced to undergo RI for four years with compensation of

₹10,000/- to be paid to the injured and in default of payment of compensation, to undergo SI for a period of one month.

2. Briefly stating, the facts of the present case are that the injured Anil used to sell pudu-subzi on a rehri on the pavement in front of DMA Hall. The complainant/injured Vijay, who is a Cobbler, also has a *thia* adjacent to the rehri of Anil. On 08.04.2011 at about 1.00 pm, there was some altercation between Anil and appellant Ashraf (who was regular customer of Anil) on the issue of payment of pudu-subzi. At that time, appellant got enraged and stabbed Anil in his abdomen with a kitchen knife which was lying on the rehri of Anil. The complainant Vijay overpowered the appellant alongwith knife and matter was reported at 100 number. Police came at the spot and appellant alongwith weapon of offence was handed over to the police and injured was removed to the hospital. On completion of investigation, chargesheet was submitted in the Court.

3. On the basis of material placed on record by the prosecution, the appellant was charged for the offence punishable under Section 307 IPC to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined eleven witnesses. After concluding the trial, the learned ASJ found the appellant guilty of the offence punishable under Section 307 IPC and sentenced him in the manner aforesaid. Feeling aggrieved by his conviction and sentence, the appellant preferred this appeal.

5. Learned counsel for the appellant submits that the appellant has compounded the matter with the injured due to intervention of respectable persons of the area and copy of the compromise deed has already been placed on record as Annexure-B. He further submits that vide impugned

judgment, a compensation of ₹ 10,000/- was ordered to be paid to the injured, which has already been paid by the appellant.

6. Appellant is produced from J/C today. Learned counsel for the appellant submits that the appellant has undergone about six months in judicial custody. He further submits that the appellant is not challenging his conviction and a lenient view may be taken on the point of sentence.

7. Mr. Anil Yadav – the injured is present in person and submits that a compensation of ₹10,000/- has already been received by him from the appellant. He further submits that he has compounded the matter with the appellant due to their friendly relations as well intervention of respectable persons of the locality and now he has no grudge against the appellant. The injured Anil Yadav states that appellant had been his old customer and he does not want the appellant to undergo further sentence and he may be directed to be released.

8. 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.

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 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.”*

11. In the case in hand, the appellant has been convicted for committing the offence punishable under Section 307 IPC and sentenced to undergo RI for a four years with compensation of ₹ 10,000/- to be paid to the injured and in default of payment of compensation, to undergo SI for a period of one month.

12. Perusal of the nominal roll of the appellant reveals that as on 27.01.2016 the appellant has undergone four months and twenty-eight days, meaning thereby as on date he has undergone about six months out of the total sentence of four years.

13. Considering the circumstances in which the quarrel between the injured and the appellant took place and the weapon of an offence i.e. kitchen knife, which was lying on the rehri of the injured, while upholding the conviction of the appellant, the substantive sentence awarded to him is reduced to the period already undergone by the appellant. The compensation

amount of ₹ 10,000/- has already been paid by the appellant to the injured. Mr.R.P.Luthra, learned counsel for the appellant submits that today in the Court also ₹ 7,000/- has been paid to the injured towards costs of treatment. The impugned order on sentence dated 23.09.2015 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.

14. Crl.A.No.1082/2015 stands disposed of accordingly.

15. A copy of the order be sent to learned Trial Court as well as to the Jail Superintendent for necessary information and compliance.

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

**PRATIBHA RANI, J.**

**MARCH 02, 2016**

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