

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 231 OF 2016

Navneet Singh @ Tiger @ Ravi Singh, aged 19 yers, S/o Kalvinder Singh, Qr. No. 26A, Street No. 27, Sector No.4, Bhilai, District Durg (C.G.)

... Appellant

Versus

State of Chhattisgarh, through Police Station Bhilai Bhatti Thana, Sector No.3, Bihlai

... Respondent

For Appellant	:	Mr. Arun Kochar, Advocate.
For Respondent-State	:	Mr. Ashok Swarnakar, Panel Lawyer
For Complainant	:	Mr. R.K. Bhagat, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

09/02/2017

1. The Appellant stands convicted and sentenced to undergo R.I. for 3 months and to pay fine of Rs.500/- in default of which, to undergo additional S.I. for 30 days under Section 294 of IPC and to undergo R.I. for 10 years and to pay fine of Rs.2000/- in default of which, to undergo additional S.I. for 90 days under Section 307 of IPC, with a direction to run both the sentences concurrently, as ordered on 4.2.2016 by the Sixth Additional Sessions Judge, Durg, in Sessions Trial No. 148 of 2013.

2. Pending the appeal before this Court, the Complainant has filed an application under Section 320(5) of CrPC seeking permission to compound the offence and for letting off the Appellant from the criminal prosecution. This Court on an earlier occasion had directed the Complainant to enter appearance before the Registrar (Judicial) of this Court for recording his statement. In the light of the order of this Court 4.1.2017, the Complainant had entered his appearance before the Registrar (Judicial) where his statement was recorded. In his statement, he has made a categorical statement that pending appeal the matter has been resolved amicably between the parties

and they have settled their differences and dispute once and for all and as such he does not intend to further prosecute the Appellant in the instant case.

3. The Appellant in the instant case is in custody since the date of judgment of conviction dated 4.2.2016 as such he has remained in custody for a period of one year after the conviction was passed and during the course of the trial he has undergone custody of 2½ months. Thus, in all, the Appellant has already remained in custody for a period of about 14½ months.

4. Shri Arun Kochar, learned Counsel for the Appellant refers to the decision of Hon'ble Supreme Court rendered in the case of *Mahesh Chand & Anr. v. State of Rajasthan* [AIR 1988 SC 2111] wherein the Supreme Court had granted permission to the trial Court to compound the offence between the parties in the light of the compromise entered into between the parties, i.e., the complainant and accused in the said case. He further relies upon the decision of Hon'ble Supreme Court in *Badrilal v. State of M.P.* [2005 (7) SCC 55] wherein the Supreme Court in a case where the accused was convicted for the offence under Section 307/34 of IPC, in the light of the compromise entered into with the complainant held as under :

“4. A joint petition of compromise has been filed on behalf of the parties in which prayer has been made for recording the compromise. The offence under Section 307 IPC is not a compoundable one, therefore, compromise cannot be recorded, but at the same time it is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of about 14 months and there is no allegation that he assaulted the deceased. In the facts and circumstances of the case, we are of the view that ends of justice should be met in case the sentence of imprisonment awarded against the appellant by the trial court and reduced by the High Court is further reduced to the period already undergone.”

5. Counsel for the Appellant also relies upon another decision of the Hon'ble Supreme Court in the case of *Ishwar Singh v. State of Madhya Pradesh* [2008 SCW 7856] wherein also the Supreme Court in the light of the compromise entered into between the accused and the complainant in a case

where the accused was convicted for the offence under Section 307 of IPC, held as under:

“14. In *Jetha Ram v. State of Rajasthan*, (2006) 9 SCC 255, *Murugesan & Ors. v. Ganapathy Velar*, (2001) 10 SCC 504 and *Ishwarlal v. State of M.P.*, JT 1988 (3) SC 366 (1), this Court, while taking into account the fact of compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in *Mahesh Chand v. State of Rajasthan*, AIR 1988 SC 2111, such offence was ordered to be compounded.

15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind.

16. In the instant case, the incident took place before more than fifteen years; the parties are residing in one and the same village and they are also relatives. The appellant was about 20 years of age at the time of commission of crime. It was his first offence. After conviction, the petitioner was taken into custody. During the pendency of appeal before the High Court, he was enlarged on bail but, after the decision of the High Court, he again surrendered and is in jail at present. Though he had applied for bail, the prayer was not granted and he is not released on bail. Considering the totality of facts and circumstances, in our opinion, ends of justice would be met if the sentence of imprisonment awarded to the appellant (Accused No.1) is reduced to the period already undergone.

17. For the foregoing reasons, the appeal deserves to be partly allowed and accordingly allowed by maintaining the conviction recorded by the trial court and confirmed by the Appellate Court but by reducing the sentence already undergone by the appellant. The sentence of payment of fine is not disturbed. If the appellant has not paid the amount of fine, he will pay such amount within four weeks from today. ”

6. Lastly, the Counsel for the Appellant relies upon the decision of the Hon’ble Supreme Court rendered in the case of *Rajendra Harakchand Bhandari v. State of Maharashtra & Anr.* [2011 (13) SCC 311] wherein in paragraph 13 and 14 it was held as under:

“16. We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the

circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on 17-5-1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

17. Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.”

7. Counsel for the Appellant in the light of the aforesaid decisions prayed that the present appeal may also be allowed to the extent that the sentence of the Appellant may be modified to the period already undergone.

8. Shri Ashok Swarnakar, learned Counsel for the State however opposes the prayer of the Counsel for the Appellant, on the ground that it is a case where there is ample evidence which have come on record to establish and prove the offence for which the Appellant has been found guilty. He further submits that the nature of offence also is very serious in nature and therefore it does not warrant any sympathetic consideration.

9. Shri R.K. Bhagat, learned Counsel, enters appearance on behalf of Complainant, and submits that since the parties to the dispute were known to each other much prior to the dispute which arose and that subsequent to the assault and the appeal being filed they have amicably resolved their dispute and now are having a cordial relationship, the Complainant as such does not want to further precipitate the matter any further and he does not intend to further prosecute the Appellant also and wants the matter to be closed once and for all.

10. Having considered the rival contentions put forth on either side and on perusal of the judgments cited by the Counsel for the Appellant, this Court is of the opinion that the present case also falls within the factual matrix of the cases which have been relied upon by the Counsel for the Appellant. In the light of the compromise which has been entered into between the parties and also taking note of the statement of the Complainant recorded before the Registrar (Judicial) of this Court on 4.1.2017, this Court is of the considered view that it is fit case where the prayer made by the Counsel for the Appellant can be considered.

11. From the record it appears that this was the first offence which was registered against the present Appellant and there is no criminal antecedent against him. In addition, at the time of commission of offence the Appellant was a young boy of 19 years of age and the said fact also weighs more in the mind of this Court for allowing this prayer of the Appellant. In addition, what is also to be seen is the fact that the 19 year old boy has already remained in custody for almost 14½ - 15 months. Thus, in the light of the decisions referred to in the preceding paragraphs particularly, the case of *Rajendra Harakchand Bhandari* (supra), this Court is of the view that ends of the justice would meet if the order of conviction is maintained and the sentence part stands reduced to the period already undergone by the Appellant. It is ordered accordingly.

12. Consequently, the judgment of conviction against the Appellant for the offence under Sections 294 and 307 of IPC is affirmed. However, the substantive sentence awarded to him stands reduced to the period already undergone by him.

13. The Appellant is in jail. He shall be released from jail forthwith, if not required in any other case subject to the provisions contained in Section 437-A of CrPC.

14. The appeal is allowed and disposed of to that extent.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/