

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.723 of 2016**

Arising Out of PS. Case No.-17 Year-2013 Thana- KESARIA District- East Champaran

Manohar Lal Singh Son of Dhruv Narayan Singh Resident of Village-
Nayagaon, PS. Keshariya Dist East Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y.C. Verma, Sr. Adv. Mr. Archit Rajpal, Adv. Mr. Ansul, Adv. Ms. Sagrika, Adv. Mr. Navneet Kumar, Adv. Ms. Jayanti Kumari, Adv.
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT**

Date : 17-05-2019

1. Appellant, Manohar Lal Singh has been found guilty for an offence punishable under Section 307 of the IPC and sentence to undergo R.I. for seven years as well as to pay fine appertaining to Rs.10,000/- in default thereof to undergo, S.I. for three months, additionally, under Section 324 of the IPC and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for one month, additionally, with further direction to run the sentences concurrently, with a further direction to set off the period having undergone vide judgment of conviction dated 22.08.2016 and order of sentence dated 23.08.2016 passed by Additional Sessions Judge, VIIth, East Champaran at Motihari in Sessions Trial



No.340 of 2016/43 of 2016 arising out of Keshariya P.S. Case No.17 of 2013.

2. Ranjan Kumar (PW.5) gave his fardbeyan on 21.01.2013 at Magadh Hospital, Rajendra Nagar, Patna at 05:15 PM before a police official belonging to Kadamkuan Police Station disclosing therein that on 20.01.2013 while he was reading newspaper in a fertilizer shop at Nayagaon Bazar near Bank of Baroda having presence of Sudhanshu Kumar, Sandeep Kumar, all on a sudden Manohar Lal Singh got down from the Bolero Jeep armed with Bhujali, began to abuse him and repeatedly inflicted Bhujali blow over head as well as different parts of body on account of which, he fallen down in a pool of blood. He tried to escape therefrom but was prevented by Dhruv Narayan Singh who was armed with lathi and who also assaulted with lathi. The aforesaid two persons intervened in order to rescue. He became unconscious. His family members, after getting information lifted him to Keshariya Hospital wherefrom, he was referred to PMCH but in order to have best medical facility, he has been admitted at the Magadh Hospital where he is being treated. The motive for occurrence has been shown as, the illegal effort of Dhruv Narayan Singh to block a road has been frustrated by him. Furthermore, it



has also been divulged that the accused persons took away Rs.12,000/- from his pocket.

3. After registration of Keshariya P.S. Case no.17/2013, investigation commenced and followed with submission of charge sheet facilitating the trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced in defence.

5. Altogether nine Pws have been examined on behalf of prosecution who are PW.1-Krishna Prasad, PW.2-Lalita Devi, PW.3-Niraj Kumar, PW.4-Diplal Prasad, PW.5-Ranjan Kumar, PW.6-Devendra Prasad, PW.7-ghanshyam Chandra Kushwaha @ Sushil Kumar, PW.8-Dr. Parsuram Sharma, PW.9-Onkar Nath Sharma, Investigating Officer. The prosecution has also exhibited, Ext.1-Signature of Krishna Prasad over fardbeyan, Ext.1/A-Signature of the informant over fardbeyan, Ext.2-Injury report, Ext.2/A-Supplementary injury report, Ext.3-Formal FIR, Ext.4-Endorsement over fardbeyan. As stated above, nothing has been adduced in defence.



6. Learned counsel for the appellant has submitted that irrespective of the fact that case has been compromised amongst the parties witnesses have substantiated the same during trial, even then, the learned lower court convicted and sentenced the appellant on the basis of the materials having adduced on behalf of prosecution which out not to be in the background of subsequent development. The learned counsel in the facts and circumstances of the case, instead of challenging the finding recorded at the end of the learned lower court has submitted that as there happens to be finding of the learned lower court that the case has been compromised, from the evidence of PW.5, informant/injured it is apparent that he has compromised the case, an offence punishable under Section 307 of the IPC is non-compoundable but has got no adverse impact over the society rather it happens to be an occurrence amongst an individual whereupon, the court's indulgence at least over sentence is attracted as the learned trial court failed to appreciate on that very score, properly. That being so, even at the present stage the appellant is not at all denuded to raise the plea and in likewise manner, the appellate court is within its domain to modify the sentence and for that, referred **Ram Pujan & Ors. vs. State of Uttar Pradesh** reported in (1973) 2 SCC 456, **Mahesh Chand &**



Anr. vs. State of Rajasthan reported in (1990) Suppl. SCC 681, **Murugesan & Ors. vs. Ganapathy Velar** reported in (2001) 10 SCC 504, **Jetha Ram & Ors. vs. State of Rajasthan** reported in (2006) 9 SCC 255, **Ishwarlal vs. State of Madhya Pradesh** reported in (2008) 15 SCC 671. So submitted that even maintaining the conviction, considering the nature of the evidence, intention of the parties, sentenced could be modified, as period of custody already undergone.

7. The learned APP while opposing the submission made on behalf of learned counsel for the appellant has submitted that irrespective of the principle having been enunciated by the Apex Court as referred herein above, it should not be allowed to eclipse the finding of the learned lower court which is based upon factual aspect analyzing the medical evidence which depicts the intention of the appellant, murderous one supported by corrolary evidences. So, the judgment impugned did not attract interference on any score.

8. It is needless to say that ordinarily the offence being non-compoundable has been kept excluded from the purview of the court for want of adherence of Section 320 of the Cr.P.C. However, in the background of restoration of harmony, as well as to promote the mutual feeling, in some cases, irrespective



of offence being non-compoundable, the offence has been allowed to compromise particularly relating to matrimonial dispute, commercial, or dispute having no adverse impact upon the society, or heinous one. Even finding adverse after having full-fledge trial, the Apex Court, times without number has observed that while inflicting sentence the event has to be properly acknowledged. More recently in **Unnikrishnan v. State of Kerala** reported in **(2018) 5 SCC 343**, wherein the appellant has been convicted and sentenced for an offence punishable under Section 394 of the IPC though non-compoundable in terms of Section 320 of the IPC, has been considered and decided in the background of compromise following way:

“7. The aforesaid question has troubled this Court on different occasions, not only in connection with compounding of offences punishable under the criminal justice system, but also in respect of civil matters, and in respect of matrimonial matters in particular, where the Court had to strike a balance between the rigidity of the law and doing substantiation justice to the parties.

8. In order to meet certain unusual situations, this Court has from time to time taken recourse to innovations and the powers vested in it under Article 142 of the Constitution, in order to give a quietus to a litigation demanding a pragmatic solution.

9. In the case on hand, the petitioner is convicted for the offences punishable under Section 394 IPC and is sentenced to two years' rigorous imprisonment. We are aware that the said offence is not compoundable within the scope of Section 320 Cr.P.C.

10. In a series of decisions i.e. *Bharat Singh v. State of M.P.* (1990 Supp SCC 62), *Ram Lal v. State of J & K* [(1999) 2 SCC 213], *Puttaswamy v. State of Karnataka* [(2009) 1 SCC 711] this Court allowed the parties to compound the offence even though the offence is 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 the Code of Criminal Procedure, the Court may, in view of the compromise arrived at between the parties, reduce the sentence imposed while maintaining the conviction.”

9. From the record itself, it is evident that appellant happens to be under custody since 15.03.2016. Regard being had to the facts and circumstances of the case, maintaining the conviction, sentence is modified as period having undergone. With the modification of the sentence, instant appeal is dismissed. Appellant who is under custody be released henceforth, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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