

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1054 OF 2023

Manohar @ Mayur Chipalekar ... Appellant
V/s.

State of Maharashtra ... Respondent

Mr. Harshad Sathe with Mr. Saurabh Butala, for the appellant.

Mrs. M.R. Tidke, APP, for the Respondent/State.

Ms. Reena Prajapati with Ms. Kinjal Luniya h/f S.C. Mangle, for the
respondent no 2.

CORAM : KISHORE C. SANT, J.

DATE : 9th May 2024

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1. Appeal is directed to be taken as per the order dated 12th December 2023 passed by the Hon'ble Supreme Court expediting the appeal as sentence is only three years and the bail application was rejected. The appeal is therefore taken up for hearing.

2. Learned advocate for the appellant submits that because of the intervention of the elderly persons in the village and the common friends, the matter is amicably settled between the informant-injured and the accused. Informant, Rajesh Mhatre has now filed an affidavit

stating that because of intervention of the elderly persons and have developed harmonious relations and he has no objection. It is further stated that the offence is of 2014 the appellant was on bail since last 10 years. There is no untoward incident taken place, though they are residing in the same locality. The question, therefore, is whether offence can be compounded when conviction is under section 307 of IPC ? The clear answer is that the offence is not compoundable in view of section 320 of Cr.P.C..

3. Learned advocate for the appellant relied upon the judgment reported in the case of **“Ishwar Singh vs. State of Madhya Pradesh”¹**, in the said case the Hon’ble Supreme Court held that since the offence is not compoundable it cannot be compounded. However, a sentence can be reduced considering the compromise between the parties. He further relied upon the judgment in the case of **“Syed Afzal Ahmed and Ors.Vs State of Maharashtra and Anr.”²**, in the said case considering the nature of offence, it was held that section 307 and 326 were not applicable and the case was under section 324 and the same was compounded. In the case of **“Ram Lal and Anr v/s. State of J & K”³**, in the said case offence was under section 326 of IPC to one of the

1 (2008) 15 SCC 667

2 2007 SCC online Bom 1679

3 (1999) 2 SCC 213

applicant's and another was convicted for the offence punishable under section 324 of IPC. Offence under section 324 of IPC was compounded. However, considering the offence under section 326, the sentence was reduced to already undergone. He further relied upon the judgment in the case of **"Surendra Nath Mohanty and Anr. v/s. State of Orissa"**⁴ wherein the sentence was reduced to already undergone with fine of Rs. 5,000/- on each of the accused. In that case the conviction was under section 326 of IPC. The matter that was considered for 10 years. There was no dispute between the parties.

4. Learned APP relies upon two judgments in the case of **"State of Madhya Pradesh vs Kanha Alias Omprakash"**⁵, and in the case of **"R. Prakash Vs. State of Karnataka"**⁶, the Court considered the offence under section 307 and held that the nature of the injuries is not material, what is material is the intention of the accused coupled with overt act in execution thereto. In that case conviction and sentence was maintained and the appellant / accused was directed to surrender to suffer sentence. She further relied upon the judgment in the case of **"R. Prakash Vs. State of Karnataka"** (supra), wherein the Hon'ble Supreme Court has considered the ingredients of section 307.

4 (1999) 5 SCC 238

5 AIR 2019 SC 713

6 AIR 2019 SC 713

It is held that it is not essential that bodily injury capable of causing death should have been inflicted. No dispute about submission of learned APP on the strength of these two judgments. This Court has only considered as to whether in view of settlement whether to reduce the sentence.

5. Today, an affidavit of the injured informant is produced on record. He has appeared through V.C. He is duly identified by learned advocate Ms. Reena Prajapati, for respondent no. 2. This Court finds that in view of the judgments in the case of **“Ishwar Singh vs. State of Madhya Pradesh”** (*supra*), that the sentence can be reduced to already undergone. Hence the following order:

ORDER

- i) Appeal is partly allowed.
 - ii) Conviction recorded by the Additional Sessions Judge, Panvel dated 23/08/2023 under Section 307 of IPC is confirmed. However, the sentence of 3 years is reduced to sentence already undergone subject to payment of cost of Rs. 25,000/- to be paid to the Taluka Legal Services Authority, Panvel.
6. Appeal stands disposed of.

(KISHORE C. SANT, J)