

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 94 of 1998

Judgment reserved on : 08.03.2017

Judgment delivered on : 29.03.2017

- Bisahu Ram, S/o Tijauram Sikari, aged about 34 years, R/o Gram: Dhangaon (Sikaridera) Teh Janjgir, Distt Bilaspur (MP) (Now Chhattisgarh) ----- **Appellant**

Versus

- State of Madhya Pradesh Through: Station House Officer, Pamgarh, Tahsil : Janjgir, Distt. Bilaspur (MP) (Now Chhattisgarh) ----- **Respondent**

For Appellant	:	Shri Sourabh Sharma, Advocate
For Respondent/State	:	Shri Sanjev Pandey, GA

Hon'ble Shri Justice Anil Kumar Shukla

CAV Judgment

1) The appellant has preferred the present appeal against the judgment of conviction and order of sentence dated 15.12.1997 delivered by the learned Additional Sessions Judge, Janjgir in Session Trial No. 66 of 1994, whereby the appellant has been convicted for the offence punishable under Section 326 of the IPC, sentenced to undergo Rigorous Imprisonment for 2 years and to pay fine of Rs.400/- with default stipulation.

2) Prosecution story, in brief, is that complainant-Chhayaram had lodged a report that on 08.12.1993 between 9-10 pm on being called by the appellant and one Tijau, he went to the appellant along with his friends Ram Satta and Gangadeen. After some time, some altercation took place regarding money and the

appellant along with other co-accused assaulted the complainant by lathi and axe by which he received injuries on his face and head. Initially offence under Section 307/34 was registered against the appellant. Later, on conclusion, the appellant had been convicted for the offence under Section 326 of the IPC and was sentenced as mentioned above.

3) Statements of the witnesses were recorded under Section 161 of the Cr.P.C and after completion of investigation, a charge-sheet was filed before Judicial Magistrate First Class, Janjgir and the JMFC committed the case to the Sessions Court and thereafter the case was received on transfer by the Additional Sessions Judge, Janjgir.

4) In order to prove the guilt of the accused/appellant, the prosecution has examined as many as 11 witnesses. No defence witness has been examined. The appellant was examined under Section 313 of the Cr.P.C., in which he denied the circumstances appearing against him and claimed his innocence and false implication in the crime in question.

5) After providing opportunity of hearing to the parties, learned Additional Sessions Judge has convicted and sentenced the appellant as aforementioned.

6) I have heard learned counsel for the parties, perused the judgment impugned and record of the trial Court.

7) Learned counsel submits that he confines his argument to the sentence part only and does not challenge the conviction

imposed upon the appellant. According to the sentence part awarded to the appellant, learned counsel submits that the appellant is now 57 years old and he is from a poor economic background. Out of the jail sentence of two years awarded to him, he remained in the custody for 75 days during the trial and deposited the fine amount imposed upon him. Learned counsel further submits that the appellant has been facing the Criminal Case since the year 1993 and more than 23 years have passed after the incident. He had been granted bail by order dated 14.01.1998. Therefore, learned counsel prays that jail sentence of the appellant may be reduced to the period already undergone by him.

8) On the other hand, learned State counsel supported the impugned judgment though not disputed the above facts.

9) It is not in dispute that the incident is of 08.12.1993. More than 23 years have already passed since the date of the incident and the appellant has already suffered jail sentence for 75 days. He is now 57 years old and no evidence has been led by the prosecution regarding past criminal antecedent of the appellant.

10) In light of above discussion, I am of the considered opinion that interest of justice would be served if, while upholding the conviction imposed upon the appellant, he is sentenced with the imprisonment already suffered by him with an additional imposition of fine amount. It would not be in the interest of justice to send him back to Jail after a long gap of 23 years.

11) Accordingly, the appeal filed by the appellant is hereby allowed in part. The conviction of the appellant under Section 326 of the IPC is hereby maintained. The sentence of two years imposed on the appellant is reduced to the period already undergone by him. However, he shall pay additional fine of Rs.2,000/-within two months from the date of receipt of copy of this order. In default, the appellant to undergo one month simple imprisonment.

12) It is reported that the appellant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in view of the provisions contained under Section 437-A of the Cr.P.C.

13) Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-
(Anil Kumar Shukla)
JUDGE