

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1100 of 2002

Order reserved on : 14.08.2018

Order passed on : 05.09.2018

Kumar @ Rajkumar Tarak, S/o. Derha Ram Dhimar, Aged 35 years, R/o. Kurra, Nawapara, District Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh, Through Station Incharge Police Station Gobra, Nawapara, District Raipur (C.G.)

---- Respondent

For Appellant : Mr. H.B. Agrawal, Sr. Advocate with
Ms. Itu Rani, Advocate
For Respondent : Mr. Rajendra Tripathi, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. Challenge in this appeal is to the judgment of conviction and order of sentence dated 04.10.2002 passed by the First Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No. 59 of 2002, whereby learned First Additional Sessions Judge convicted the appellant for the offence punishable under Sections 323 of the IPC and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs. 1000/- in

default of payment of fine, to further undergo rigorous imprisonment for three months.

2. Case of the prosecution, in brief, is that on the fateful day i.e. on 26.10. 2001 at about 21.15 o'clock, Dussehra's event was going on at Mahamaya Chowk, Kurra and at that time, Mehtru told the appellant that he was working as poet/writer in Ramleela since last 3-4 years. But, now the member of Ramleela committee was not providing chance and insulting me. On this, quarrel took place between appellant and the deceased. The appellant assaulted the deceased by hand and fist as a result of which the deceased died. On the next date, at about 8.10 am, FIR (Ex.P-2) was lodged by Johitram Sahu(PW-1) in Police Station Gobra nawapara which was registered as Crime No. 123 of 2001 on 27.10.2001 against the appellant for the offence punishable under Section 302 of the IPC. After completion of the investigation, charge-sheet was filed before the trial Court the trial Court framed charges as mentioned above to which the appellants did not plead guilty. The trial Court conducted the trial and after completion of evidence of the prosecution side, statement of the appellants under Section 313 of the Cr.P.C. were recorded and after completion of trial, the trial Judge considering the material available on record by the impugned judgement convicted and sentenced the appellants as mentioned above.

3. Learned counsel for the appellant submits that the appellant is not challenging his conviction. He further submits that he

confines his argument to the sentence part only and prays to reduce the jail sentence awarded to the appellant to the period already undergone by him as he has been facing the case against him since 2002 and the fine amount has already been deposited by the appellant and he is facing the trial for last 16 years. Learned counsel for the appellant has further submitted that the appellant has no criminal antecedent. Since the appellant has already served four months jail sentence, the same be reduced to the period already undergone by them.

4. On the other hand, learned State counsel supported the impugned judgment of conviction and sentence and opposed the arguments advanced by learned counsel for the appellants.

5. I have heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

6. From the record, it reveals that the incident took place on 26-10-2001. No evidence has been led by the prosecution regarding criminal antecedent of the appellant. More than 16 years have already passed since the date of incident and the appellants have already suffered jail sentence for one month.

7. 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 appellants, they are sentenced with the imprisonment already suffered by them.

8. Accordingly, the appeals filed by the appellant is hereby allowed in part. The conviction of the appellant is hereby maintained. However, the jail sentence of the appellant is reduced to the period already undergone by him. The sentence of fine, with default stipulation, imposed upon the appellant by the impugned judgment shall remain unchanged.

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

Sd/-

(Vimla Singh Kapoor)
JUDGE

Santosh