

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 659 of 2005**

1. Jai Kumar Sahu S/o Ganesh Ram Sahu, aged about 20 years,
2. Jitendra Kumar S/o Narmada Prasad Vaishnav, aged about 20 years,
Both R/o Shyam Nagar, Lingiyadih, Police Station Sarkanda, District Bilaspur (C.G.).

----Appellants**Versus**

State of Chhattisgarh Through Police Station Chakarbhata, Bilaspur, Distt. Bilaspur (C.G.).

---- Respondent

For Appellants	:	Mr. Surendra Kumar Dewangan, Advocate
For Respondent	:	Mr. Shangarsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board**03/12/2018**

1. It is reported that Appellant Jai Kumar has died during pendency of this appeal. A death certificate submitted by the State Counsel also shows that he has died on 23/10/2014.
2. Since no representation is made on behalf of Appellant Jai Kumar, therefore, this appeal is abated on his behalf.
3. This appeal is preferred against the judgment dated 30/06/2005 passed in S.T No. 308/2004 by the Third Additional Sessions Judge, Bilaspur, whereby the Appellants have been convicted under Section 394 read with 397 of the IPC and sentenced to undergo RI for 7 years and to pay fine of Rs. 2000/- with default stipulation.
4. Brief facts of the case are that on 16/02/2004, Complainant Sushil

Kaushik had gone to Chakarbhata to drop Thakur Ram Kaushik on his Hero Puch Moped bearing registration No. CG10 ZF 1698. Thereafter, at about 9:00 pm, when he was returning to Nagpura, it is alleged that the Appellants and one Ram Kumar assaulted him and looted his Hero Puch. They were armed with sword and knife. The Complainant received injuries on his head and ribs. He was taken to hospital and thereafter, the matter was reported by Prem Kaushik. On the basis of said report, FIR has been registered. During course of investigation, on the memorandum statement of Jeetendra one knife has been seized from him. Looted Moped has been seized from Ram Kumar. After investigation, a charge-sheet was filed before the trial Court. The trial Court framed the charges.

5. To prove the guilt of the accused/Appellants, the prosecution has examined as many as 12 witnesses. Statements of the Appellants under Section 313 of the Cr.P.C were recorded, wherein they denied all the charges framed against them and pleaded their innocence.
6. After trial, the learned Sessions Judge has convicted and sentenced the Appellants as mentioned in paragraph one of this judgment. Hence, this appeal.
7. Learned Counsel appearing for Appellant Jitendra Kumar submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. He further submits that the incident is of the year 2004, Appellant Jitendra is facing the *lis* since 14 years, out of total jail sentence of 7 years he has undergone about 4 ½ years, therefore, the jail sentence awarded to him may be reduced to

the period already undergone by him.

8. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
9. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
10. Considering the above facts and circumstances, particularly considering that out of total jail sentence of 7 years, Appellant Jitendra has undergone about 4 ½ years and he is facing the *lis* since 2004, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon him, the jail sentenced awarded to him is reduced to the period already undergone by him.
11. Consequently, the revision is partly allowed. The conviction of Appellant Jitendra Kumar under Section 394 read with 397 of the IPC is upheld and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
12. It is reported that Appellant Jitendra is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of 6 months in view of the provisions contained in Section 437-A of the Code of Criminal Procedure.
13. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge