

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1257 of 2014**

Mehatru Rathiya S/o Rameshwar Rathiya, aged about 35 years, Occupation- Agriculturist, R/o. Village Teram, Police Station Gharghoda, District – Raigarh (C.G.).

----Appellant**Versus**

State of Chhattisgarh through Station House Officer, Police Station- Gharghoda, District- Raigarh (C.G.).

---- Respondent

For Appellant	:	Mr. A.D. Kuldeep, Advocate
For Respondent	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Judgment on Board****24/02/2018**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 05/11/2014 passed in Special S.T. No. 130/2013 by the First Additional Sessions Judge, Raigarh, Distt. Raigarh (C.G.) convicting the accused/appellant under Section 307 of IPC and sentenced him to undergo RI for 10 years and to pay fine of Rs. 500/- with default stipulation.
2. Case of the prosecution, in brief, is that on 23/06/2013 at about 1:00 pm, while returning from the shop of Narayan Behra, the complainant- Gouri Shankar (PW1), being heard the sound of '*Baja*', reached the house of Bhushan (PW2). It is alleged that the accused/appellant without any reasoning assaulted the complainant with knife. The complainant sustained injuries on his neck. The complainant- Gouri Shankar lodged

a FIR vide Ex.P-1. During investigation, on the basis of memorandum of accused/appellant, a knife was seized from the possession of the accused/appellant vide seizure memo Ex.P-6. The complainant was medically examined by Dr. A.K. Minj (PW5), who gave his report Ex.P-3A. He also examined the seized knife and gave his report Ex.P-9 A. Statement of witnesses under Section 161 of Cr.P.C were recorded. After investigation, a charge-sheet under Section 307 of IPC was filed. Charges were framed. To guilt the accused/appellant, the prosecution has examined as many as 5 witnesses. Statement of accused/appellant under Section 313 of Cr.P.C was also recorded, wherein he denied all the charges and pleaded his innocence and false implication in the present case. After trial, the trial Court has convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

3. Learned Counsel appearing for the appellant 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 matter is of the year 2013 , the appellant is facing the *lis* since last 5 years and there is no criminal antecedent of the appellant. It is further submitted that the appellant is in custody since 24/06/2013 and out of total jail sentence of 10 years, he has already undergone about 5 years, therefore, the jail sentence awarded to him may be reduced to the period already undergone by him.
4. 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.

5. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.
6. It is not in dispute that the matter relates to the year 2013 and the appellant is facing the *lis* since last 5 years. Moreover, there is no known criminal antecedent of the appellant and out of total jail sentence of 10 years, he has already undergone about 5 years.
7. Considering the above facts and circumstances, I am of the considered opinion that the ends of justice would be met if, while upholding the conviction imposed upon the appellant, the jail sentence awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction imposed upon the appellant under Section 307 of IPC is upheld, but the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentence imposed upon him is also affirmed.
9. 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