

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1029 of 2008**

Aswani Kumar S/o Kanak Naai, Aged about 34 years, Caste- Naai R/o Village Gandai, Pandariya Thana, Gandai, District Rajnandgaon (C.G.) Present R/o Sartugiyapara, Kontagaon Mahamaya, District Durg (C.G.)

---- Appellant**Versus**

State of Chhattisgarh Through Police Station Mahamaya, District Durg (C.G.)

---- Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**29/11/2019**

1. This appeal has been preferred against the judgment dated 09/09/2008 passed in Sessions Trial No. 08/2008 by the Additional Sessions Judge, Balod, District Durg (C.G.), whereby the Appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo RI for 3 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 17/11/2007 at about 8 pm, Complainant Mahesh was sitting in front of his house along with Aatmaram, Tilak Sahu, Amar Singh, Ghanaram. It is alleged that the Appellant, carrying a rod came there and assaulted the Complainant on his head, due to which the Complainant became unconscious. The Complainant was

hospitalized and remained admitted there till 26/11/2007. The matter was reported by Aatma Ram. During course of investigation, a rod was seized from the Appellant. Statement of Injured as well as other witnesses were recorded. After completion of investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 14 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded, wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. 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 Appellant has undergone about 11 months out of total jail sentence of 3 years, he has no criminal antecedent and he is facing the *lis* since 2007, therefore, he prays that the jail sentence awarded to the Appellant may be reduced to the period already undergone by him.
5. 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.
6. I have heard learned Counsel appearing on behalf of the parties and perused the record minutely.

7. Considering the above facts and circumstances of the case, particularly considering that out of total jail sentence of 3 years, the Appellant has undergone about 11 months, he is facing the *lis* since 2007 and there is no criminal antecedent against him, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned section is affirmed and he is sentenced to the period already undergone by him. The fine sentence is 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