

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 188 of 2000**

Kairu @ Bhukhau S/o Rameshwar, aged about 30 years R/o Tibhupali, Police Station Saraipali, Distt. Mahasamund (C.G.).

---- Appellant**Versus**

State of M.P. through S.H.O, P.S. saraipali, Distt. Mahasamund (Now State of Chhattisgarh).

---- Respondent

For Appellant	:	Mr. A.L. Singroul, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

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

1. This appeal has been preferred against the judgment dated 05/01/2000 passed in Sessions Trial No. 140/1994 by the Second Additional Sessions Judge, Mahasamund (C.G.), whereby the Appellant has been convicted under Section 304 Part-II of the Indian Penal Code and sentenced to undergo RI for 7 years and to pay fine of Rs. 2000/- with default stipulation.
2. Facts of the case are that on 04/01/1993 Jaidath along with Pandit and Nehru was sitting in his house. At that time, the Appellant along with co-accused persons came there and thrown stones on his house, due to that some dispute took place between both the parties. It is alleged that younger brother of Jaidath namely Jagdeesh came to the spot. The Appellant and co-accused assaulted him. They also assaulted

Jaidath, Pandit and Nehru due to that they sustained injuries. A report was lodged at outpost Balod. Initially, offence under Section 307 and 323/34 of the IPC was registered. During treatment, Jagdeesh died. Inquest was done. The postmortem was conducted by Dr. Mangrurkar. Later on, statement of witnesses under Section 161 of the Cr.P.C. were recorded. A charge-sheet has been filed against 8 accused persons including the Appellant. Trial Court framed the charges. As many as 16 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 acquitted all the other accused persons from all the charges. The Appellant has also been acquitted from the charge framed under Sections 302, 323/149 of the IPC, however, he has been convicted and sentenced 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 2 years and 22 days out of total jail sentence of 7 years, he has no criminal antecedent and he is facing the *lis* since 1993, the Appellant was aged about 36 years at the relevant time and now he would be aged about more than 56 years, 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 7 years, the Appellant has undergone about 2 years 22 days, he is facing the *lis* since 1993 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. It is reported that the Appellant/accused 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 Cr.P.C.
10. 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