

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1521 of 2016**

Ram Rai Rathiya S/o Chandiram Rathiya, aged about 60 years R/o Bartapali,
Police Station Dharamjaigarh, District Raigarh (C.G.)

----Appellant

Versus

State of Chhattisgarh through Station House Officer, Police Station
Dharamjaigarh, District Rajarh (C.G.).

---- Respondent

For Appellant	:	Mr. Ashish Gupta, Advocate
For Respondent	:	Mrs. Smriti Shrivastava, PL

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

22/07/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 28/11/2018 passed in Sessions Trial No. 58/2016 by the Fifth Additional Sessions Judge, Raigarh (C.G.) convicting the Appellant under Section 307 of the IPC and sentenced to undergo RI for 5 years and to pay fine of Rs. 1000/- with default stipulation.
2. Facts of the case are that on 28/02/2016 at about 10-11 am, when Injured/Complainant Sadhram (PW2) was sitting out of his house, at that time the Appellant came out from his house and assaulted the Injured by means of axe. The Inured/Complainant received injuries on his body. The incident was witnessed by Mongraavti Rathiya, Neelambar and Jaldhar Behara. The matter was reported by the Complainant/Injured vide Ex.P-3. The Injured was medically examined by Dr. S.S. Bhagat (PW5) who gave his report Ex.P-7. Statement of

witnesses under Section 161 of the Cr.P.C were recorded. After investigation, a charge-sheet was filed. Trial Court framed the charges. As many as 7 prosecution witnesses have been examined. No defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded, wherein he pleaded his innocence and false implication in the matter.

3. After trial, the learned 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 out of jail sentence of 5 years, the Appellant has already undergone about 3 and ½ years as he is in jail since 28/02/2016. Three injuries were sustained by the Complainant which were not on vital part of the body. The nature of injuries were simple in nature. The Appellant has no criminal antecedent. Therefore, he prays that the jail sentence awarded to him 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, particularly that out of

total jail sentence of 5 years, the Appellant has undergone about 3 and ½ years and there is no criminal antecedent of the Appellant, I am of the view 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 the aforementioned Section is upheld, however, the jail sentence awarded to him is reduced to the period already undergone by him.
9. It is reported that the Appellant is in jail. He be released forthwith, if not required in any other case.
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