

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1152 of 2002**

Shiv Kumar @ Budlu S/o Kevalram, aged about 32 years R/o Village Hathnikala, Police Station Mungeli, District Bilaspur (C.G.)

---- Appellant**Versus**

State of Chhattigarh through Station House Officer, Police Station Jarhagaon, District Bilaspur (C.G.).

---- Respondent

For Appellant	:	Mr. V.C. Ottalwar, Advocate
For Respondent	:	Ms. Smita Ghai, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**14/11/2019**

1. This appeal has been preferred against the judgment dated 31/10/2002 passed in Sessions Trial No. 177/2002 by the Additional Sessions Judge, Mungeli (C.G.), whereby the Appellant has been convicted under Sections 307 & 452 of the IPC and sentenced to undergo RI for 3 years with fine of Rs. 1000/- and RI for 1 year with fine of Rs. 500/-, respectively, with default stipulations.
2. Facts of the case are that on 28/03/2011 at about 8:00 am, the Appellant had gone to the house of the Complainant for taking his money regarding delivering of 'Murum'. When the Complainant denied to give, the Appellant assaulted him by a sword on his chest. The Appellant gave another blow of sword which was stopped by the Complainant by his hand. The matter was reported by the

Complainant vide Ex.P-2. The Complainant was medically examined by Dr. Vibha Sindor (PW4). Her report is Ex.P-8. The Complainant was also admitted in District Hospital, Bilaspur from 28/03/2002 to 17/04/2002. His discharge ticket is Ex.P-17. During course of investigation, statement of the Complainant and other witnesses have been recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 9 prosecution witnesses have been examined. No defence witness has been examined.

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 from the statement of the Appellant, it is clear that there was previous dispute between the Complainant and the Appellant and in a sudden quarrel, the incident took place. Only two injuries have been sustained by the Complainant which are simple in nature. The Appellant has undergone about 8 months out of total jail sentence of 3 years, he has no criminal antecedent and he is facing the *lis* since 2002, 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 8 months, he is facing the *lis* since 2002 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 and the fine sentence imposed under Sections 307 & 452 of the IPC is enhanced to Rs. 20,000/- & 5000/-, respectively. Ordered accordingly. The enhanced amount of fine shall be payable within 2 months from the date of receipt of a copy of this order. In default of payment, the Appellant shall be liable to undergo RI for 6 months and 3 months, respectively. If any amount has already been deposited towards fine, the same shall be adjusted in the amount of fine imposed/enhanced today.
8. The fine sentence imposed under the aforementioned Sections shall be given as compensation to the legal heirs of the Complainant/legal heirs of the Complainant in light of Section 357 (1) of the Cr.P.C.
9. Consequently, the appeal is partly allowed to the extent indicated above.
10. 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.

11. 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

Rahul