

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRIMINAL APPEAL No. 856/2001**

(Arising out of judgment of conviction and order of sentence dated 20-8-2001 passed by 7th Additional Sessions Judge, Raipur (CG) in ST No. 259/2000)

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Sukhram son of Motiram Nagesh, aged about 28 years, R/o. Village Konari, P.S. Mainpur, Distt. Raipur CG

----Appellant**-Versus-**

State of Chhattisgarh

----Respondent

For appellant : Shri Sanjay Pathak, Adv.

For State : Sushri Sangeeta Mishra, Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge

ORAL JUDGMENT**9-1-2019**

1. In this criminal appeal the challenge levied is to the judgment of conviction and order of sentence dated 20-8-2001 passed by 7th Additional Sessions Judge, Raipur (CG) in ST No. 259/2000 whereby and whereunder he convicted the appellant for the offence punishable u/s 324 of the Indian Penal Code (in short "the IPC") and sentenced him to undergo RI for 1 year and 9 months and to pay a fine of Rs. 1,000/-, in default of payment of fine, to further under RI for 3 months.

2. In brief, case of the prosecution is that on 3-2-2000 at

about 12.00 pm at village Job Bhatha, co-accused Motiram fired at complainant Amritlal from his gun with intention to kill him, but the complainant Mehttar came in his front thus the gun shot hit palm of his left hand. Appellant caused injury on back of complainant Amritlal by knife. Co-accused Ganesh assaulted complainant Amritlal by axe. After completion of the investigation a charge sheet was filed against the appellant and said co-accused. The Trial Court framed the charges against the co-accused Motiram under Section 307, IPC, under Section 25 and 27 of the Arms Act, against the co-accused Ganeshram under Section 352, 307/34, IPC and against the appellant u/s 326, 307/34, IPC. After conclusion of the trial, Trial Court acquitted the co-accused Motiram and Ganesh Ram of all the charges. It also, acquitted appellant of the charge punishable under Section 307/34, IPC, however convicted and sentenced him as aforesaid, instead of Section 326, IPC.

3. Counsel for the appellant at the outset urged that he is not challenging the conviction of the appellant rather he is challenging only the aforesaid period of sentence of RI of 1 year and 9 months. He further submitted that the appellant has already undergone about 1 year and 8 months, thus the period of RI for 1 year and 9 months may be reduced to the period undergone by him.
4. The State Counsel argued that aforesaid RI is just and proper and does not call for any interference.
5. At the time of the incident, no minimum imprisonment was

provided for the offence punishable under Section 324, IPC. The appellant has remained in jail for 563 days. About 19 years have passed after the incident. At the time of incident, appellant was aged 28 years, now he is 47 years of age. Now he is in mainstream of society. Sending him jail would disturb his as well as his family members' life. Hence, no useful purpose would be served if he is sent to jail after 19 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI of 1 year and 9 months is reduced to the sentence for the period already undergone by him with fine sentence.

6. Consequently, the appeal is partly allowed. The sentence of appellant of RI for 1 year and 9 months for offence under Section 324, IPC, is reduced to the period already undergone by him and the fine sentence and default clause awarded by the trial Court is affirmed.
7. The appellant is reported to be on bail. His bail and bond shall continue for a further period of six months as per requirement of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge