

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1128 of 2016**

Radheshayam Thakur @ Radhey Nai, Aged about 51 years S/o Bhagwat Thakur R/o Village Manpur, P.S. Surajpur, District Surajpur (C.G.).

---- Appellant**Versus**

State of Chhattigarh Through S.H.O. Ajak Surajpur, District Surajpur (C.G.).

---- Respondent

For Appellant	:	Mr. Hemant Gupta, Advocate
For Respondent	:	Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**11/09/2019**

1. This appeal has been preferred against the judgment dated 27/08/2016 passed in Sessions Trial No. 94/2013 by the Special Judge, Schedule Caste/Schedule Tribe (Prevention of Atrocities) Act, Surajpur (C.G.), whereby the Appellant has been convicted under Section 307 of the IPC 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 27/09/2011 there was festival of 'PITAR'. Complainant Umesh Sonwani and his brother Ashok Sonwani were standing in front of their house. At that time, the Appellant came and asked them for food on the occasion of 'PITAR'. Thereafter, the Complainant and his brother took the Appellant inside their house and served food (Mutton). When, the Complainant and his brother were

going to leave the Appellant, on the way the Appellant made a dispute to the extent that the Complainant and his brother have served him meat of beef. The Complainant tried to convince him that he served him mutton of goat. But, the Appellant assaulted brother of the Complainant on his neck by Ustara, due to which Ashok Sonwani sustained grievous injuries on his neck. Complainant Umesh Sonwani lodged FIR. On the basis of said, offence has been registered. During course of investigation on the basis of memorandum statement of the Appellant, one Ustara has been seized from his possession. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet under Section 307 of the IPC and Section 3 (2) (5) of the Schedule Caste/Schedule Tribe (Prevention of Atrocities) Act have been filed. Trial Court framed the charges. As many as 8 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 has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has acquitted the Appellant from the charge framed under Section 3 (2) (5) of the Schedule Caste/Schedule Tribe (Prevention of Atrocities) Act and convicted and sentenced him 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 there was no previous enmity between the Appellant and the Complainant. He further

submits that on the basis of evidence available on record, it is established that at the time of incident, the Appellant had consumed liquor and only on the dispute that the Appellant has been served meat of beef instead of mutton, the incident occurred, therefore, there was no intention of the Appellant to commit murder of the Injured. He further submits that the Appellant has undergone about 3 months during trial and he is in jail since 27/08/2016, and has undergone about 3 ½ years, he has no criminal antecedent and he is facing the *lis* since 2011, 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 3 ½ years, he is facing the *lis* since 2011 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 Section 307 of the IPC is enhanced to Rs. 20,000/-. Ordered accordingly. The enhanced amount of fine shall be payable within 1 month 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. 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 Section 307 of the IPC shall be given as compensation to the Injured Ashok Sonwani 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