

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1490 of 2016**

Kamleshwar Aghariya S/o Ramnath Aghariya, aged about 50 years,
Occupation- Agriculture, R/o Dadri Amgahat, Tamnar, District Raigarh (C.G.)

---- Appellant**Versus**

State of Chhattigarh Through Station house Officer, Police of Police Station
Tamnar, District Raigarh (C.G.).

---- Respondent

For Appellant	:	Mr. C.R. Sahu, Advocate
For Respondent	:	Ms. Smriti Shrivatava, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**14/10/2019**

1. This appeal has been preferred against the judgment dated 03/09/2014 passed in Sessions Trial No. 164/2012 by the First Additional Sessions Judge, Raigarh, District Raigarh (C.G.), whereby the Appellant has been convicted under Section 307 of the IPC and Section 5 of the Chhattisgarh Tonhi Pratadana Nivaran Adhiniyam, 2005 and sentenced to undergo RI for 10 years with fine of Rs. 5,000/- and RI for 5 years with fine of Rs. 5000/-, respectively, with default stipulations.
2. Facts of the case are that on 16/10/2012 at about 8:00 am Complainant Tulsi Bai (PW2) had gone to dump cow dung. While returning from there on the way, the Appellant assaulted her by a *tabbal* on her shoulder, back and hand. The incident was witnessed by

her daughters namely Vimla and Premshila. The Complainant escaped herself by hiding herself at her brother-in-law house. Later on the matter was reported. On the basis of said report, offence has been registered. After completion of investigation, a charge-sheet has been 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 has been recorded, wherein he has pleaded his innocence and false implication in the matter.

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 the Appellant has no criminal antecedent, he is facing the *lis* since 2012 and out of total jail sentence of 10 years, he is in jail since 17/10/2012 and has completed around 7 years of jail sentence, 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 10 years, the Appellant is in jail since 17/10/2012 and thus completed about 7 years, he is facing the /is since 2012 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 sections is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
9. 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