

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 842 of 2008**

Shiv Kumar S/o Sukhram Kashyap, aged about 24 years R/o Village Indauri,
Police Station pipariya, District Kabirdham (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through the Police Station Pipariya, District Kabirdham
(C.G.).

---- Respondent

For Appellant	:	Mr. Basant Kaiwartya, Advocate
For Respondent	:	Mr. Ajay Kumbrani, PL

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**03/02/2020**

1. This appeal has been preferred against the judgment dated 28/08/2008 passed in S.T. No. 41/2007 by the Sessions Judge, Kabirdham whereby the Appellant has been convicted under Section 323 of the IPC and sentenced to undergo RI for 1 year.
2. Facts of the case are that on 20/05/2007, the Appellant along with co-accused Maniram came to the house of the Deceased namely Ramkhilawan. In the afternoon, they took the Deceased with them. After some time, wife of the Deceased in search of her husband reached to Indore Bazar, where she saw the Appellant along with co-accused Maniram was assaulting him. Due to assault, the Deceased sustained grievous injuries and died on the spot. Dehati Nalsi Ex.P-5 was lodged by the wife of the Deceased. Spot map was prepared vide

Ex.P-12. During course of investigation on the basis of memorandum statement of co-accused Maniram, one measure weight of 500 grams was seized from his possession. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges under Section 302 alternatively 302/34 of the IPC.

3. After completion of trial, the trial Court has convicted co-accused Maniram for offence punishable under Section 304 Part-II of the IPC and sentenced him RI for 5 years. However, the Appellant has been convicted and sentenced 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 Applicant has already undergone about 4 ½ months, he has no criminal antecedent and he is facing the *lis* since 2007, therefore, the 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 of the case, particularly considering that out of total jail sentence of 7 years, the Appellant has undergone 4 ½ months, he is facing the *lis* since 2007 and there is no criminal antecedent against them, 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. It is reported that the Appellant is on bail. His bail bond is not discharged at this stage and the same shall remain operative for a further period of six months in view of the provisions contained in Section 437-A of the IPC.
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