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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL APPEAL No. 4177 of 2023

BETWEEN:-

1. **RAJU @ GOVIND S/O KISHAN KOLI,
AGED ABOUT 21 YEARS,
OCCUPATION: BUSINESS
R/O. HOUSE NO.107, LAXMANPURA,
RATLAM (MADHYA PRADESH)**

2. **BUTY @ HUKUMCHAND
S/O PRABHUDAYAL,
AGED ABOUT 45 YEARS,
OCCUPATION: LABOR
R/O. GALI NO. 2 PNT COLONY RATLAM
(MADHYA PRADESH)**

3. **MONTY @ RAVINDRA S/O MITHLESH KALAL,
AGED ABOUT 21 YEARS,
OCCUPATION: UEMPLOYED
R/O. HOUSE NO. 306, JAWAHAR NAGAR DIST.:
RATLAM (MADHYA PRADESH)**

.....APPELLANT

(SHRI SANJAY KUMAR SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THRU.P.S.INDUSTRIAL AREA,
DIST.: RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI RAJESH JOSHI - GOVT. ADVOCATE)

Reserved on :29.08.2023

Delivered on :11.09.2023

*This appeal coming on for hearing this day, the court passed the
following:*

JUDGMENT

This criminal appeal is preferred under section 374 of Cr.P.C. by the appellants being aggrieved by the judgment dated 15.03.2023 passed by 2nd Additional Session Judge, Ratlam, District Ratlam in S.T. No.2400095/2014 whereby the appellants/accused persons have been convicted for the offence punishable under Sections 324/34, 325/34, 326/34 of IPC, 1860 and sentenced for 02 years, 3 years and 5 years R.I. with fine of Rs.2000/-, Rs.3000/-, Rs.5000/- and usual default stipulations.

2. Prosecution story in nut shell are that on 26.02.2014 complainant, a driver, filed a report that he was returning back after dropping his child in school and when he reached Godra bridge, then accused persons namely Raju Kholi armed with sword, Vikas Harijan armed with iron rod, Monti armed with sword and Bunty armed with baseball stick stopped the complainant and started hurling abuses on account of previous enmity. On being prevented by the complainant, they sprinkled chilli powder in his eyes and started assaulting him. Appellant Raju and Monti assaulted complainant on his left leg below his knee and on right hand wrist. Accused Bunty assaulted the complainant below his right leg knee with baseball stick and accused Vikas assaulted with iron rod on his feet due to which complainant sustained injury and started bleeding. Complainant cried for rescue. On hearing his appeal, Nandibai, Mukesh and Amarsingh along with other persons came on to rescue him. Accused persons fled away from the spot. Further allegation is that the accused persons threatened to kill the complainant. Complainant was taken to hospital for treatment.

3. On the basis of *dehati nalisi* of the injured/complainant offence under Sections 341, 294, 323, 326, 506, 34 of IPC was registered at Crime No.125/14 against the accused persons. During the course of investigation, spot map was

prepared and weapons used in the incident were seized and seizure memo was prepared. Further after recording the statement of the witnesses and arrest of the accused persons, charge sheet was filed before Judicial Magistrate First Class, Ratlam, in turn the matter was committed to the Sessions Court which was finally heard and adjudicated by Additional Sessions Judge, Ratlam, District Ratlam.

5. The appellants/accused persons were tried and charged under Sections 326 in alternate 326/34, 325 in alternate 325/34, 324 in alternate 324/34, 323 in alternate 323/34, 294 and 506 of IPC. Thereafter the plea of the appellants/accused persons has been recorded in which they abjured their guilt and took a plea that they are innocent.

6. The prosecution has examined as many as 9 witnesses namely Nandibai (PW-1), Amarsingh (PW-2), Injured/complainant-Praveen Solanki (PW-3), Dr. Shailendra Mathur (PW-4), Jitendra Raikwar (PW-5), Mukesh (P.W.6), Dr. R. K. Tiwari (P.W.7), A.B. Khaka (P.W.8), R.L. Meena (P.W.9). No witness has been examined in support of the defence by the appellants.

7. The learned trial Court, after considering the evidence and material available on record has convicted the appellants/accused persons under Sections 324/34, 325/34, 326/34 of IPC, 1860. Hence being aggrieved of the impugned order, the appellants have preferred the present appeal.

08. The appellants have preferred the present appeal mainly on the ground that judgment and order of the trial Court is contrary to law and facts available on record. The learned trial Court committed error in not considering the material contradictions and omissions appeared in the statements of prosecution witnesses. Learned counsel for the appellants has vehemently

contended that as per the statement of Dr. Shailendra Mathur (P.W.4) only injury No.7 (injured sustained fracture on his right and left legs) can be treated as grievous injury as this injury was caused by hard and blunt object. There is no evidence available on record by which it can be proved that the said fracture was caused by any sharp and pointed object. Therefore, this case would travel to the extent of Section 325 of IPC and no case is made out for offence under Section 326 of IPC.

09. During the course of arguments, learned counsel alternatively prayed for reduction of the sentence so awarded looking to nature of allegations. Since the appellant no.1 Raju and appellant no.3 Monty @ Ravindra have suffered 11 months of jail incarceration and appellant no.2 Bunty has already suffered more than 6 months of jail sentence, therefore, their sentence be reduced to the period already undergone by enhancing the fine amount.

10. Learned Govt. Advocate has opposed the prayer. He supported the judgment and order by submitting that there is clear evidence against the appellants, therefore, he prays for dismissal of the appeal.

11. I have considered rival contentions of the parties and have perused the record.

12. In view of the aforesaid rival submissions the question of determination is as to whether the conviction and sentence passed by the learned trial Court is correct in the eyes of law and fact.

13. At the outset the testimony of Praveen Solanki (P.W.3) the injured person is called for consideration. The witness deposed that appellants Raju, Bunty and Monty came to him and they had assaulted with rod, sword, baseball stick and other articles. That apart, the testimony of this injured witness finds support from the statement of Nandibai (P.W.1) and Dr. Shailendra Mathur

(P.W.4), Dr. R.K. Tiwari (P.W.7) and other witnesses of prosecution. A.B. Khaka (P.W.8) has supported the fact of *Dehati Nalisi* and R.L. Meena (P.W.9) has asseverated the facts of investigation. These witness were elaborately cross examined by learned counsel for the appellants but even then the testimony of these witnesses has not be shaken in their cross examination.

14. In the course of arguments learned counsel has mainly expostulated on the charge of offence punishable under Section 326 of IPC. In view of the arguments, the testimony of Dr. Shailendra Mathur (P.W.4) has been examined who has posited that injury No.7 was a fracture caused on both the legs of injured Praveen Solanki, but in this sequence, he has also admitted that injuries no.1 to 6 were caused by sharp weapon, but the injury no.7 was caused by hard and blunt object. Certainly, Praveen Solanki (P.W.3) himself has stated that applicant Raju has used sword for assaulting on his leg but when Dr. Shailendra Mathur (P.W.4) has manifested that the injury was caused by hard and blunt object, the testimony of Praveen Solanki (P.W.3) in this regard is found untrustworthy, however, there may be the possibility of using the sword by its opposite side (i.e. hard and blunt part), rather than using the sharp edged portion.

15. As per prosecution story the applicants have not only used the sword but they have also used baseball stick and iron rod hence there is a possibility that the injury caused on the legs of injured Praveen Solanki would have been caused by these weapons also, which are hard and blunt. With regard to the nature of the said weapon, there is a reference in the book of **Law Of Crimes** by **Ratanlal and Dirajlal**. In the 33rd edition of the aforesaid book on page No.2170, the authors have placed their view regarding '*Lathi*'

which is worth to be quoted here under:-

"That being the true importance of the word '*Likely*' used in the section, the '*lathi*' said to have been used for assault could not be said to be by its very nature an instrument likely to cause death within the preview of the section."

16. In this reference, the instruments like *lathi*, iron rod, stick, base ball stick can be treated in same manner, certainly by these weapons grievous hurt can be caused, however, when the doctor has clearly opined regarding these that the said fracture was caused by hard and blunt object, then the conviction should not be under Section 326 but under Section 325 of IPC, because such type of weapons which were hard and blunt weapon did not answer any of the categories of weapons described under Section 326 of IPC.

17. In *Mohinder Singh vs State (Delhi Administration)* reported in *AIR 1986 SC 309* it is held that grievous hurt caused by blunt weapon like '*lathi*' could fall within Section 325 of IPC and not under Section 326 of IPC. Likewise, in another case *Halke vs. State of M.P. reported as AIR 1994 SC 951* the accused caused death of deceased by inflicting blows on him with sticks. Head injury proved to be fatal and the deceased died after about a week. In this case the accused was held liable under Section 325 of IPC and not under Section 326 of IPC. In this regard the following ratio rendered by Principal Seat of this Court in the case of *Anusuiya Daharwala v. Govind Ram @ Tappu Kadve* reported in *2017 Lawsuit (MP) 223* is condign to quote here:-

"Since injured Sheelabai has sustained a fracture in her ulna bone of left hand and since as per medical evidence the said fracture is caused by a hard and blunt object and since the left hand is not vital part of human body and since there is no likely cause even remotely that the fracture sustained by injured Sheelabai would result in her death, it is held in the

aforesaid facts and evidence that the bamboo sticks used by the respondents-accused persons in causing the fracture to injured Sheelabai do not come within the purview of the expression of Section 326 IPC. Thus, the learned ASJ has rightly held in the impugned order that the respondents-accused persons have prima facie committed an offence punishable under Section 325 IPC by causing a grievous hurt to injured Sheelabai with a hard and blunt object."

18. In view of the aforesaid proposition of law and analysis in entirety the submissions of learned counsel for the appellant with respect to relying upon the testimony of Dr. Shailendra Mathur appears to be correct. Since Dr. S. Mathur has clearly manifested that injury no.7 (which was a fracture) was caused by hard and blunt object, it would not be safe to convict the appellants under Section 326 of IPC, but rather it would be condign to convict them under Section 325 of IPC.

19. Here it is pertinent to mention that learned trial Court has convicted the appellants under Section 324/34, and 326/34, whereas the injured was only one person hence, under the effect of Section 71 of IPC, the accused persons can only be convicted for a graver offence, which is now, in view of the aforesaid discussions is Section 325/34 of IPC. Hence in view of the aforesaid discussions appellants can be convicted under Section 325/34 of IPC for causing grievous injury to injured Praveen Solanki and in the result thereof they will be discharged from the remaining offence under Section 324 & 326/34 of IPC.

20. So far as the sentencing part is concerned, the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The main twin objectives of sentencing policy that of deterrence and correction are to be complied with in order to improvise

the character of the accused.

21. In view of the aforesaid policy and looking to the fact that appellant no.1 Raju and appellant no.3 Monty @ Ravindra have already suffered 11 months of jail incarceration and appellant no.2 Bunty has already suffered more than 6 months of jail sentence the sentence awarded to the appellants under Section 325/34 of IPC is hereby reduced to the sentence already undergone by them by increasing the fine amount from Rs.5000/- to Rs.10,000/- to be paid by each of the appellants within a period of one month from today. Out of the fine amount so deposited by the petitioners Rs.15,000/- be paid to Injured-Praveen Solanki under Section 357(3) of Cr.P.C. by the trial Court. The fine amount, if already deposited as well as the compensation amount paid to the injured if any shall be adjusted. The bail bond of the petitioners shall be discharged after depositing the fine amount. If the petitioners fail to deposit the fine amount, they will suffer 2 months of simple imprisonment in default. Accordingly, the appeal is partly allowed and disposed of.

22. The order of trial Court regarding disposal of the seized article stands confirmed.

23. A copy of this order along with the record, be sent to the trial Court concerned for necessary information and compliance.

24. Pending I.As. if any, stand closed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE