IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 4389 of 2023

BETWEEN:-

JAHID S/O ABDUL AZIZ, AGED ABOUT 38 YEARS, OCCUPATION: BOOT HOUSE SHOPKEEPER R/O VILLAGE PILUKHEDI POLICE KURAWAT DISTT. RAJGARH (MADHYA PRADESH)

.....APPELLANT

(BY SHRI VARUN MISHRA, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KURAWAR DISTRICT RAJGARH (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI H.S. RATHORE, FOR STATE)

CRIMINAL APPEAL No. 4293 of 2023

BETWEEN:-

1. **ANSAR KHAN S/O NAWAB KHAN, AGED ABOUT 70 Y E A R S , OCCUPATION: LABOUR GRAM PILUKHEDI, P.S. KURAWAR DISTRICT RAJGRH AND CURRENTLY ADDRESS- PIPLIYA HASANBAD, P.S. BAIRASIYA, DIST. BHOPAL (MADHYA PRADESH)**

2. **USMAN S/O IMDAD ALI, AGED ABOUT 56 YEARS, OCCUPATION: LABOUR PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

3. **ARMAN S/O USMAN KHAN, AGED ABOUT 32 YEARS, OCCUPATION: LABOUR PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

4. **MUSTAFA S/O MEHBUB KHAN, AGED ABOUT 38 YEARS, OCCUPATION: LABOUR PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

5. **SALIM KHAN S/O SHAHZAD KHAN, AGED ABOUT 45 YEARS, OCCUPATION: LABOUR PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

6. **SHAHID KHAN @ MANU S/O HABIBUL REHMAN @BABU KHAN, AGED ABOUT 45 YEARS, OCCUPATION: LABOUR GRAM PILUKHEDA, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

7. **NOORUDDIN S/O TUNDE KHAN, AGED ABOUT 50 YEARS, OCCUPATION: LABOUR PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

8. **ZUBER KHAN S/O NAEEM PATHAN, AGED ABOUT 30 YEARS, OCCUPATION: BUSINESS PILUKHEDI, P.S. KURAWAR, DIST. RAJGARH (MADHYA PRADESH)**

.....APPELLANT

(SHRI SANTOSH KUMAR MEENA, LEARNED COUNSEL FOR THE APPELLANT [P-4], MS. REKHA SHRIVASTAVA, LEARNED COUNSEL FOR THE APPELLANT [P-6] & SHRI SYED ASIF ALI WARSI, LEARNED COUNSEL FOR THE APPELLANT)

AND

STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KURAWAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI H.S. RATHORE FOR STATE)

CRIMINAL APPEAL No. 5047 of 2023

BETWEEN:-

1. **JAKIR @ BHOLA S/O GAFFUR KHAN, AGED ABOUT 35 YEARS, OCCUPATION: LABOUR BALBATPURA, PILUKHEDI, P.S. KURAWAR, DISTRICT RAJGARH (MADHYA PRADESH)**

2. **IMRAN S/O MUNSHI KHAN, AGED ABOUT 35 YEARS, OCCUPATION: LABOR PILUKHEDI P.S. KURAWAR DISTRICT RAJGARH (MADHYA PRADESH)**

.....APPELLANT

(BY SHRI RITESH INANI, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KURAWAR, DISTRICT RAJGARH (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI H.S. RATHORE, FOR STATE)

HEARD ON : 04.04.2024
RESERVED ON : 14.05.2024

These criminal appeals having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following:

JUDGMENT

These criminal appeals have been preferred under section 374 of Cr.P.C. by the appellants being aggrieved by the judgment dated 14.03.2023, passed by First Additional Session Judge, Narsinghgarh, District Rajgarh in S.T. No.29/2015, whereby the appellants have been convicted for the offence punishable under Sections 333/149, 307/149, 332/149 (five counts) and 148 of IPC and sentenced to undergo 10 years,, 10 years, 03 years (for each count under section 332/149) and 03 years R.I. respective with fine of Rs.10000/-, Rs.10000/-, Rs.2000/- (each count) and Rs.2000/- with default stipulations.

2. As per the prosecution story, on 28.07.2014, at about 12:30PM, an accident had happened at National Highway 12 near village Peelukhedi in which, unfortunately, a girl met with the said accident and expired on the spot. On the information, the police reached on the spot. However, due to the said accident, the local residents of the village had jammed the National Highway. Police authorities tried to calm the mob, but they were unturned. At that time, accused Ansar, Bulla @ Fharukh, Jahid, Mustak, Nuruddeen, Mannu having armed with iron rode and stics other accused namely Saleem, Usmaan, Irfan, Tajuddin,

Juber, Bhola and 4-5 other persons jointly interrupted the police action and with intention to kill the police personnel they have assaulted Hariprasad, Durgaprasad, Shashibhushan Bhadoriya, and Ramnarayan. The police team called the extra force and thereafter, on being seen the extra force, the accused persons involved in the mob fled away from the spot. On the date of incident, a Dehatil Nalishi was registered on the basis of the statements of complainant Irfan Ahmad Khan and later on, on the same day, the FIR was registered after taking the dying declaration of injured Hariprasad by Nayab Teshsildar and he was referred to Bhopal Care Hospital, Bhopal. Other injured police personnel were also sent for medical treatment. Spot map was prepared, statements of the witnesses were taken, blood stained cloths were recovered and sent for FSL and thereafter, after following the due procedure, the police registered the FIR against the appellants under Sections 347, 148, 353, 333, 332, 307/149, 326/149, 325/149 and 323/149 (6 counts) of IPC. Thereafter, charge-sheet was filed in the Court of Judicial Magistrate First Class-Narsinghgarh and the case was committed to the Court of Sessions.

03. In the sequel thereoff, the appellants were tried and charged under Sections 347, 148, 353, 333, 332, 307/149, 326/149, 325/149 and 323/149 (6 counts). They abjured their guilt and took a plea that they had been falsely implicated in the present crime and prayed for trial.

04. In support of the case, the prosecution has examined as many as 25 witnesses namely Anil (PW-1) Irfan Ahmad (PW-2), Gajraj (PW-3), Hariprasad (PW-4), H.P. Mehra (PW-5), Durga Prasad (PW-6), Pawan Agarwal (PW-7), Shashi Bhushan Singh (PW-8), Ramnarayan (PW-9) Lakhan Singh (PW-10), Dr. Ankur Garde (PW-11), Dr. N.K. Gawli (PW-12), Nawal Singh Meena (PW-13), Mahesh Jaat (PW-14), Dinesh Jaat (PW-15), Mahendra (PW-16), Babban

Thakur (PW-17), Dr. Ajay Mehta (PW-18), Laad Singh (PW-19), Seetaram Soni (PW-20), Daulatram (PW-21), Omprakash (PW-22), Khemendra (PW-23), Ravi Suryawanshi (PW-24) and Manish Singh (PW-25).

05. No witness has been adduced by the appellants in their defence.

06. Learned trial Court, on appreciation of the evidence and argument adduced by the parties, pronounced the impugned judgment on 14.03.2023 and finally concluded the case and convicted the appellants for commission of offence as mentioned above in para No. 1 of this judgment.

07. Learned counsels for the appellants submit that the the appellants are innocent and the learned trial Court has convicted the appellants wrongly without considering the evidence available on record. Counsels for the appellants further submit that the appellants have not caused any fatal injury to the injured persons because there is nothing on record to show that the injured have received serious injury which may be fatal or sufficient to cause death. It is further submitted that there are material contradictions and omissions in the statements of the prosecution witnesses but the learned trial Court has erred in ignoring the same and in convicting the appellants. It is further submitted that the incident had happened all of a sudden, there is no knowledge and intention or motive to assault the injured, hence, the offence shall not travel more than the offence under Section 326 of IPC, but the learned trial Court has wrongly convicted appellants under Section 307 of IPC without considering the evidence available on record. In support of their contentions, counsel for the appellant submits that the person who has caused injury i.e. the main accused Gulla @ Fharukh has already been expired, all the other injured persons have only received the injuries simple in nature, therefore, considering the act and

accusation of the appellants, the learned trial Court has erred in convicting the appellants.

08. Learned counsel for the appellants further contended that prosecution has not proved its case beyond reasonable doubt that accused persons voluntarily caused the injuries to deter or prevent the public servants from performing their public duties. Hence, they are also not liable for conviction under Section 333 and 332 of IPC. It is also contended that since there is no intention to cause death of injured Hariprasad, the accused can be convicted only for causing injury by sharp edge weapon with the aid of Section 149 of IPC, but in this case, they cannot be convicted for both the offences under Section 333/149 of IPC and under Section 326 of IPC for causing injury to Hariprasad. They can only be convicted for only one offence, because no one can be convicted twice for a single criminal act. Since, the offence under Section 326 of IPC is punishable for life imprisonment and the offence under Section 333 of IPC is punishable for 10 years, it will be apposite to convict the appellants only for one section, hence, they cannot be convicted under Section 333 of IPC**.** Accordingly, they pray for reduction of the sentence to the period already undergone or as the Court may deem fit in the interest of justice.

09. Per contra, learned Public Prosecutor has opposed the prayer. Inviting my attention towards the conclusive paragraphs of the impugned judgement, learned public prosecutor has submitted that the injured persons have received the injuries caused by the appellant and the learned trial Court has rightly convicted the appellants by sentencing them appropriately. It is further submitted that the learned trial Court has however also convicted the appellants under Section 333/149 of IPC and sentenced them for 10 years R.I. therefore, the sentence of the appellant cannot be reduced at any cost. The appellants

have assaulted the police party while the police personnel were indulge in their duty. They have jammed the National Highway, therefore, the learned trial Court has rightly convicted the appellants under Section 333/149 of IPC. Hence, prays for dismissal of the appeal.

10. In reply, counsel for the appellants have not disputed the factum that the appellants have interfered with the police and assaulted them while the police party was on official duties, but in view of the facts and circumstances of the case, prays that the learned trial Court has convicted the appellants wrongly on higher side and prays for reduction of their sentence.

11. I have heard the counsel for the parties and perused the record.

12. In back drop of the arguments advanced by learned counsel for the parties, this Court has to consider the following questions for determination of this appeal:

(i) that as to whether the appellants have committed the offence with common object and with intention to cause death of injured Hariprasad (PW-4) and thereby they are guilty of rioting being armed with weapons?

(ii) as to whether the appellants have caused injury to Hariprasad and other five injured with intention to deter or prevent them from discharging their public duties and deter or prevent them from discharging their public duties?

13. At the outset, this Court is required to consider the question of common object. Complainant Irfan (PW-2) narrates in his examination in chief that when the police officers were busy in the proceedings of investigation with regard to a fatal accident, the accused persons namely Usman, Jahir, Imran,

Ansar Khan and Bulla with other 12-13 accused persons armed with stick, rode and farsi assaulted on the police party. Resultantly, head of constable Hariprasad had been broken. Injured witnesses Hariprasad (PW-4), H.P. Mehra (PW-5), Durgaprasad, (PW-6), Shashi Bhushan Singh (PW-8) have supported the prosecution case in some different words. In this regard, the testimony of these witnesses has not been rebutted in their cross-examination.

14. However, some of the independent witnesses have not supported the case of the prosecution. Nevertheless, the testimony of aforesaid injured witnesses inspire confidence. Having gone through the testimony of these witnesses, it is unearthed that all the accused persons came on the place of incident with intention to create unrest and to cause violence by attacking on the police officials. They were well armed with stick, hockey, lathis and farsi.

15. In so far as the question of unlawful assembly for making any common object is concerned, it is contented by learned counsel for the appellants that gathering of accused persons was not unlawful and they cannot be convicted for causing riot and also cannot be convicted with the help of section 149 of IPC. However, it is well settled that the gathering of the assembly which may lawful on its very inception, may convert into unlawful assembly at later stage. The enunciation of Full Bench of Hon'ble Apex Court in the case of **Kansiram vs. State of M.P. [(2002) 1 SCC 71]** is worth to refer here:-

> ***"An assembly though lawful to begin with may in the course of events become unlawful.."***

16. So far as the submissions of learned counsel for the appellants that the witness of police have not stated specific overt act of each accused, actually, as per the statements of the witnesses, the accused persons gathered altogether and thereafter most of them assaulted on the police party. On this

aspect, it is settled principle that it is not necessary that each and every member of unlawful assembly must play overt act in commission of offence. In order to find out whether assembly was unlawful, the role played by an individual with coupled with using arms carried by members and their behavior prior to during or after the incident alongwith surrounding circumstances plays significant role.

17. On this aspect, the law laid down by Hon'ble Apex Court in the case of **Kuldeep Yadav vs. State of Bihar [(2011) 5 SCC 324]** is as under:

> ***"It is not the intention of the legislature in enacting Section 149 to render every member of unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to attract Section 149, it must be shown that the incriminating act was done to accomplish the common object of unlawful assembly and it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149 IPC"***

18. In this way, when the statements of police officials establish the presence and act of accused persons on the spot, their involvement in the crime is established. All the accused persons have made thier contribution in the offence which has been committed by one or more member of unlawful assembly.

19. Now, coming to the question of veracity and credibility of police witnesses. Learned counsel for the appellants demurred that no one can be convicted only on the basis of testimonies of police officers. Learned counsel for the State has opposed this contention and submitted that when the police officers are injured witnesses, there is no reason to discard their testimonies.

20. On this aspect, this Court is of the opinion that if the police witnesses are injured and Hariprasad (PW-4) has received grievous injury, this Court is bound to rely his testimony especially when the testimony inspires confidence. In this case, the testimonies of Dr. Ankur Gurde (PW-11), Dr. N.K. Kohil (PW-12), Dr. Ajay Mehta (PW-18) have supported the factum of injuries on the person of police party. After examining the testimonies of these doctors, it is revealed that Hariprasad Dhangar has received fracture in both hands and also received a head injury which was caused by hard and sharp object. However, the injuries caused to Ramnarayan, Shashibhushan Singh, Irfan, Durgaprasad and Hariprasad S/o Nararan Prasad are simple injuries.

21. Learned counsel has remonstrated that there are many contradictions and omission between the testimonies of police officials. Actually, where gathering of several assailants committed the offence, it is often not possible for witnesses to describe accurately about the role played by each one of the assailants in the incident. It is also not possible to remember each and every blow delivered by assailants over the injured persons. Hence, only on the basis of minor contradictions arising in testimonies of injured witnesses, their testimony cannot be wiped out.

22. Further, in this case, as per the aforesaid discussion, it is well established that all the police officials have supported the prosecution story and

out of 11, five police personnel have received the injuries simple in nature, but injured Hariprasad has received the injury grievous in nature. The question as to why the testimony of the police witnesses should be believed in just like other cases the common witnesses are being relied upon. On this aspect, Hon'ble Apex court in its judgment pronounced in the case of **Ravindra Santaram Sawant vs. State of Maharashtra [(2002) 5 SCC 604],** specifically enunciated in para no.46 of the judgment that

> ***46. "We are, therefore, satisfied that the evidence of the police witnesses, who are also the eye witnesses, some of them injured, is worthy of credence and can be acted upon. The failure to examine independent witnesses in the facts and circumstances of this case would not reflect on the veracity of the prosecution witnesses.."***

23. As such, injured police witnesses have also the same status as other common public injured witnesses, hence, they can be relied upon just like other cases. In this case one police personnel is grievously injured while five have received simple injury, hence, there is no question to disbelieve their testimony. It is also well established principle that on the basis of minor contradictions and omissions, testimony of reliable injured witness cannot be discarded. On this aspect, the observations of Full Bench of Hon'ble Apex Court in the case of **Ashok Kumar Singh Chandel vs. State of U.P. [2022 Law Suit (SC) 1311]** has been held as under:-

> ***164. As the prosecution has established the occurrence of***

the incident through the evidence of PW-1 and PW-2, and we are in agreement with the judgment of the High Court that these are credible ocular witnesses whose statements are corroborated by other contemporaneous evidence, certain minor variations, such as non-recovery of blood-stained clothes, certain other weapons etc. will not be fatal to the case of the prosecution. This principle is well established in cases where there are credible injured eye-witness testimonies. In Lakshman Singh v. State of Bihar, this Court held:

> ***"9. In Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] , it is observed and held by this Court that "the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly". It is further observed in the said decision that "minor discrepancies do not corrode the credibility of an otherwise acceptable evidence". It is further observed that "mere non-mention of the name of an eyewitness does not render the prosecution version fragile".***
>
> ***9.1. A similar view has been expressed by this Court in the subsequent decision in Abdul Sayeed [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] . It was the case of identification by witnesses in a crowd of assailants. It is held that "in cases where there are large number of assailants, it can be difficult for witnesses to identify each assailant and attribute specific role to him". It is further observed that "when incident stood concluded within few minutes, it is natural that exact version***

of incident revealing every minute detail i.e. meticulous exactitude of individual acts, cannot be given by eyewitnesses". It is further observed that "where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable, as he is a witness that comes with an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone". It is further observed that "thus, deposition of injured witness should be relied upon unless there are strong grounds for rejection of his evidence on basis of major contradictions and discrepancies therein".

9.2. The aforesaid principle of law has been reiterated again by this Court in Ramvilas [Ramvilas v. State of M.P., 43 (2021) 9 SCC 191. (2016) 16 SCC 316 : (2016) 4 SCC (Cri) 850] and it is held that "evidence of injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard their evidence". It is further observed that "being injured witnesses, their presence at the time and place of occurrence cannot be doubted."

24. However, in this appeal on the basis of evidence available on record, this Court is satisfied that the finding of the learned trial Court regarding causing voluntary grievous hurt by hard and sharp objects as well as other weapon is in accordance with law and facts. It is also well settled principle that the maxim "*falsus in uno falsus in omnibus*" has no application in India. Hon'ble Supreme Court in the case of ***Smt. Shakila Abdul Gaffar Khan Vs. Vasant Raghunath Dhoble*** reported in ***(2003) 7 SCC 749*** has held as under :-

> ***".....it is the duty of Court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence".***

25. This incident had happened on the National Highway and it cannot be desired that it would be supported by an independent person because it is out of reach from any independent person and if that be so, the person who is travelling through the Highway or any other road, in normal tendency of a person, every one used to avoid to the investigating procedure and apart that the person shall prefer to complete his journey by avoiding such happening.

26. Since there is no convincing evidence to discard the testimony of grievously injured Hariprasad (PW-4), his sole testimony which is backed by instant FIR and medical reports is sufficient to evince the prosecution case.

27. In view of the aforesaid prepositions, the testimony of the witnesses cannot be discredited or wiped out only on the basis that the are having some contradictions or trivial matter. As such the aforesaid contention is not liable to be accepted.

28. In upshot of the aforesaid analysis of evidence as well as proposition

of law, this Court is of the considered opinion that the prosecution succeeded in proving its case beyond reasonable doubt that appellants have caused injury to the injured/complainants. Nevertheless, the testimony of witnesses regarding causing injury by iron rode and other has not been controverted in their cross-examination. However, it is envisaged that the accused who is already expired, has caused the grievous injury to Hariprasad, caused only one injury and this statement has not been rebutted regarding single blow.

29. In the MLC report, the nature of injury has been examined and as per the MLC and statement of Dr. Ankur Garde (PW-11) as per which, there is deep cut on vertex (middle of head) and blood was oozing out, the injured has also received an injury of 6X1 dimensions. Further, as per the statement of Dr. Ajay Mehta (PW-18), the injury caused on head of the injured may be dangerous to life in case of non-treatment. In this regard, the provisions of Section 320 of IPC is required to be referred to, which reads as under:-

30. 320. Grievous hurt.—The following kinds of hurt only are designated as "grievous":—

(First) — Emasculation.

(Secondly) —Permanent privation of the sight of either eye.

(Thirdly) — Permanent privation of the hearing of either ear,

(Fourthly) —Privation of any member or joint.

(Fifthly) — Destruction or permanent impairing of the powers of any member or joint.

(Sixthly) — Permanent disfiguration of the head or face.

(Seventhly) —Fracture or dislocation of a bone or tooth.

(Eighthly) —Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or

unable to follow his ordinary pursuits."

31. The 8th point of the aforesaid provision defines that ***Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.***. That apart, since, Dr. Ajay Mehta (PW-18) has explicitly elucidated and opined vide Ex.P/47 that the injury was dangerous to life, hence, the findings of learned trial Court regarding grievous injury, is found infallible and intact. **However, so far as the injuries of Shashibhusan, Durgaprasad, Hariprasad mehra, Ramnarayan and Irfam Ahmend Khan are concerned, they have received the simple injuries.**

32. Now, the question is as to whether the injury was caused with intention or knowledge to kill the injured Hariprasad. In this case, it is fact that the prosecution has not set up the case that the said injuries were sufficient to cause death in the ordinary course of nature.

33. In order to justify the conviction under Section 307 of IPC, the Court has to examine the nature of the weapon used and the manner in which it is used. In addition to that severity as well as number of the blows and the part of body where the injury was caused, are also taken into account to determine the nature of the offence. The role of motive is also ought to be taken into consideration.

34. Further, in view of the reports and the nature of the injuries, it cannot be ascertained that the accused has intention to murder, or knowledge as to the fact that the any injured would be killed by any injury. Undisputedly, this is a case of single blow over vital part i.e. head of the injured and the prosecution has also not setup that the said injuries are sufficient to cause death in the

ordinary course of nature of any injured. In this regard, The Hon'ble Apex Court in the case of **Jai Narayan Singh vs. State of Bihar [AIR 1972 SC 1764]** mandated as under:-...

> ***"11. Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 IPC and sentenced to 5 years rigorous imprisonment. According to the evidence Suraj was responsible for the chest injury which is described by Dr. Mishra P.W. 6 as a penetrating wound 1 1/2" x 1/2 x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were clean out. Suraj, according to the evidence, had thrust a bhala into the chest when Shyamdutt had fallen as a result of the blow given by Mandeo with the Farsa on his head. According to the Doctor the wound in the chest was of a grievous nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, according to the Medical Officer the condition of the patient at the time of the admission was low and serious and the injury was dangerous to life. Out of the four injuries which the Medical Officer noted, this injury was of a grievous nature while the other three injuries were simple in nature. Where four or five persons attack a man with deadly weapons it may well be presumed that the intention is to cause death In the present case however, three injuries are of simple nature though deadly weapons were used and the fourth injury caused by Suraj, though endangering life could not be deemed to be an injury which would have necessarily caused death but for timely medical aid. The benefit of doubt must, therefore, be given to Suraj with regard to the injury intended to be caused and, in our opinion, the offence is***

> ***not one under Section 307 IPC but Section 326 IPC is set aside and we convict him under Section 326-IPC. His sentence of 5 years rigorous imprisonment will have to be reduced accordingly to 3 years rigorous imprisonment."***

35. In a recent case of **Mukesh S/o Jam Singh Damor vs. State of M.P. & Others** 2022 Law Suit (MP) 165; High Court of M.P. Bench has observed as under:-

> ***"9. It is well settled that an act which is sufficient in the ordinary course to cause death of the person, but the intention on the part of the accused is lacking, the act would not constitute an offence under Section 307 of IPC. The medical evidence has to be taken for determining the intention of the accused. The intention and knowledge of the act being one of the major factor i.e. used to decide conviction under Section 307 of IPC. Before it is held that the act committed by the accused amounts to attempt to murder, it should be satisfied that the act was committed with such intention or knowledge under such circumstances that if it had caused death, it would have amounted to murder."***

36. In a recent case of **Panchram vs. State of Chattisgarh & Another reported in AIR 2023 SC 1801, the Hon'ble Apex has considered** as under:-

> ***"In his statement, the injured appearing as PW-1 submitted that when Munna (PW 6) shouted for help, Kantilal (PW 8) and Radheyshyam (PW 9) came there and seeing them the accused ran away. However, Kantilal (PW 8) was declared hostile. The prosecution***

> ***had produced another witness Radhey Shyam (PW 7). He was also declared hostile and did not support the prosecution version. Even the scissors which was seized by the police is small scissors which is used by tailors. With the aforesaid evidence on record and the kind of weapon used, in our view the offence will not fall within Section 307 I.P.C. From the reasons for fight as are emerging on record, it doesn't seem to be pre-planned act. It, at the most, can fall within the four corners of Section 326 IPC as a sharp-edged weapon was used. The injuries were not caused with an intention to cause death and were not sufficient to cause death. Hence, in our view the conviction of the appellant with respect Section 307 IPC cannot be sustained however the offence under Section 326 IPC is made out."***

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37. On conspectus of the aforesaid settled proposition of law and factual matrix of the case, there is nothing available on record which advert such intention or knowledge by which the offence of attempt to murder can be drawn.

38. Having gone through the record and medical reports including the statements of witnesses, this is crystal clear that the injured Hariprashad has received only one injury on head which was found grievous but it was not sufficient to cause death in ordinary course in nature. The prosecution has succeeded to prove that the said injury was caused by a sharp or dangerous

object. Under these circumstances, the ingredients of Section 307 of IPC are missing in the present case, nevertheless, in purview of the aforesaid deliberations, it is established by the prosecution beyond the reasonable doubt that the appellants have caused grievous injury by assaulting him.

39. In upshot of the aforesaid deliberations in entirety, the judgment of learned trial Court *qua* conviction of the appellant under Section 307 of IPC is found unsustainable and instead of Section 307 of IPC and in the light of the judgment passed by Apex court in the case of **Jainarayan (supra)** and **Panchram (supra),** the appellants are liable to be convicted under Section 326/149 of IPC.

40. So far as the conviction and sentence awarded to the appellants is concerned under Section 148 of IPC is concerned, during the course of incident, the appellants were armed with deadly weapons and they assaulted on the police party while the police officials were discharging their duties, hence, the findings of learned trial court regarding conviction of the appellants under Section 148 of IPC does not warrant any interference and the same is hereby affirmed.

41. Now, turning to the question that where the appellant caused the injuries to the police officials with intention to deter or prevent them from discharging their public duties is concerned, having gone through the whole testimony of the witnesses, it is evidently established that the appellants have knowingly caused the injuries to the police officials, but also they have caused these injuries to prevent or deter them for performing their official duties. Since the appellants have caused simple injuries, five police officials, all the accused persons would be liable to be convicted under Section 332 (five counts) read with section 149 of IPC. So far as the injuries caused to Hariprasad is

concerned, since the appellants are liable to be convicted under Section 326/149 of IPC and they cannot be convicted under Section 333/149 of IPC because none can be convicted twice for a single criminal act. It is undisputed that the offence under Section 326 of IPC is more heinous than the offence under Section 333 of IPC as the maximum punishment under Section 326 of IPC is of life imprisonment and the punishment under Section 333 of IPC is only may be extended for 10 years. Hence, it would be apposite to convict the appellants for the offence punishable under Section 326 of IPC read with Section 149 of IPC instaed of under Section 333/149 of IPC. Under these conditions, the impugned judgment regarding conviction and sentence of the appellants under Section 333/149 of IPC is hereby liable to be set aside.

42. Now, turning to the point of sentence, I have considered the fact that the said incident of offence has happened in the year 2014 i.e. 10 years ago. No criminal antecedent for consideration has been suggested by the prosecution against the appellants and they are already suffering the jail sentence since more than one year and two months. Nevertheless, looking to their conduct and accusation, the appellants cannot scot-free from justice and only symbolic or nominal punishment of undergone period, such punishment for those persons who have dare to assault the police party would result into miscarriage of justice.

43. On this aspect, the view of Hon'ble Supreme Court in the case of **Jaswinder Singh (dead) through legal representative Vs. Navjot Singh and others reported in AIR (2022) SC 2481** Para No. 26, 27 and 28 are reproduced below :-

26. An important aspect to be kept in mind is that

any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality withwhich the crime has been perpetrated.

27. A three Judges Bench of this Court in State of Karnataka v. Krishnappa while discussing the purpose of imposition of adequate sentence opined in para 18 that ".....Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence." Sumer Singh v. Surajbhan Singh (2014) 7 SCC 323.

28. The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. While opportunity to reform has to be kept in mind, the principle of pr0oportionality also has to be equally kept in mind."

44. Hence, after considering the whole aspect of the case so also the fact that the appellants have caused riot and created unrest and deter the public servants from discharging their duties and also caused grievous injuries to the injured by heard and sharp object, this Court is not inclined to let off the appellants only with period of already undergone. As such, I am of the considered view that the punishment for 03 years R.I. under Section 326/149 of IPC alongwith fine of Rs.10000/- for each accused would be condign to meet the ends of justice.

45. In the result, all the appeals are partly allowed and disposed off and the acquittal, conviction and sentence imposed upon the appellants shall be as under:

(i) All the appellants are acquitted from the charges under Section 333/149 of IPC and 307/149 of IPC and in lieu thereof they are convicted under Section 326/149 of IPC and sentenced to undergo 03 years R.I. with fine of Rs.10,000/- each and in default o f payment of fine further undergo for six months S.I.

(ii) The conviction and sentence of the appellants under Section 332/149 (five counts) with fine of Rs.2000/- each for each counts stands affirmed. Default stipulation under this section shall remain intact. For further clarifications, each appellant shall deposit fine of Rs.10000/- (for total five counts).

(iii) The conviction and sentence of the appellants

under Section 148 of IPC with fine of Rs.2000/- each also stands affirmed. Default stipulation under these sections shall remain intact.

46. The appellants are in jail. They shall be released from the jail after completion of the aforesaid sentence of three years subject to deposit the entire fine amount.

47. The sentence of the appellants shall run concurrently.

48. **If the fine amount is recovered completely, Rs.25000/- shall be paid to the injured Hariprasad Dhangar S/o Rodeji and Rs.10000/- each be paid to other injured persons namely Ramnarayan, Shashibhushan Singh, Irfan Ahmad, Durgaprasad and Hariprasad S/o Narayan Prasad. The fine as well as compensation amount, if already paid to the injured shall be adjusted.**

49 The judgment regarding disposal of the seized property stands confirmed.

50. A copy of this order alongwith the record of the trial Court, be sent to the learned trial Court for information and necessary compliance.

51. Pending application, if any stands closed.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

AMIT