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CRA-5705-2025

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

ON THE 8<sup>th</sup> OF SEPTEMBER, 2025CRIMINAL APPEAL No. 5705 of 2025*HIMANSHU SARWAN AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Ms. Jagriti Thackar - Advocate for the appellants.*

*Shri Surendra Kumar Gupta - Government Advocate for the  
respondent No.1/State.*

*Shri Yashpal Singh Sisodiya - Advocate for the respondents No.2 & 3.*  
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ORDER

*Per. Justice Vivek Rusia*

1. This is an appeal filed by the injured/complainant against the judgment dated 11.4.2025 passed by the 3rd Additional Sessions Judge, Ujjain in ST No.35/2019, whereby the respondents No.1 & 2 have been acquitted under Section 307 of IPC but convicted and sentenced under Section 325/34, 323/34 IPC.

2. As per the prosecution story, on 30.11.2018 complainant Madhuri along with her sister Priti Sarwan went to the police station and lodged a report that her younger brother Himanshu Sarwan is an Auto Driver and he parked the Auto in front of his house. His neighbours Amit Sarwan and



Sumit Sarwan have encroached the said place. At nearabout 8.30 P.M. when her brother came with the Auto, he found difficulty in parking the said Auto Rickshaw. He called Amit Sarwan and Sumit Sarwan and told them to remove the encroachment. Amit Sarwan and Sumit Sarwan went inside their house and came with wooden log and assaulted her brother and her father Sanjay Sarwan. Both started bleeding. The incident was witnessed by the local residents.

3. The FIR was lodged at P.S. Madhav Nagar, Ujjain at Crime No.872/18 under Section 307, 325, 323, 294, 506, 34 of IPC. The respondents No.2 & 3 were arrested. The investigation was completed and final report was filed on 27.12.2018. The learned Sessions Court framed the charges under Sections 307/34, 325/34 & 323/34 of IPC. The prosecution examined as many as 17 witnesses and exhibited 30 documents. After examining the oral as well as documentary evidence, the learned Sessions Court convicted and sentenced the respondents No.2 & 3 as under:-

Name of accused	Conviction	Sentence	Fine amount	Imprisonment in lieu of payment of fine
Amit	S. 325/34 IPC (for injured Himanshu)	2 years RI	Rs.5000/-	2 months RI
Amit	S. 325/34 IPC (for injured Sanjay)	2 years RI	Rs.5000/-	2 months RI
Amit	S. 323/34 IPC (for injured Madhuri)	3 months RI	Rs.1000/-	1 month RI
Sumit	S. 325/34 IPC (for injured Himanshu)	2 years RI	Rs.5000/-	2 months RI
Sumit	S. 325/34 IPC (for injured Sanjay)	2 years RI	Rs.5000/-	2 months RI
Sumit	S. 323/34 IPC (for injured Madhuri)	3 months RI	Rs.1000/-	1 month RI



4. Learned counsel appearing for the appellants submits that the respondents No.2 & 3/accused assaulted the appellants with an intention to kill. They gave blow by wooden log on the head, which is a vital part of the body. Therefore, they are liable to be convicted under Section 307 of IPC in place of Section 325 of IPC.

5. Learned counsel appearing for the State as well as respondents No.2 & 3/accused opposes the aforesaid prayer by submitting that the learned Sessions Court has rightly examined the medical record and held that the injury was not sufficient to cause death. Hence, no case for interference is made out.

*We have heard the learned counsel for the parties and perused the record.*

6. The appellant/complainant lodged an FIR on 30.11.2018 disclosing the commission of offence that Himanshu Sarwan came with the Auto and found difficulty to park it. He requested to Amit Sarwan to reduce the size of Opla so that he may park the Auto. Amit Sarwan started abusing to Himanshu Sarwan and his father Sanjay Sarwan. Thereafter accused Amit Sarwan and Sumit Sarwan both went inside their house and came up with the wooden log. Amit Sarwan and Sumit Sarwan both with an intention to kill the appellant, gave a blow on the head of Himanshu Sarwan as well as his father Sanjay Sarwan. Thereafter they gave a blow to the complainant Madhuri, who tried to save them. Himanshu Sarwan was admitted in the hospital and discharged on 4.12.2018. As per the CT Scan report there was a small right



parietal contusion and left temporal small contusion, right fracture mastoid bone was found. No active surgery was done. As per the query report (Ex.P/17), the head injury sustained by Sanjay Sarwan was simple in nature. Dr. Prashant Niwalkar (PW-8) was examined, in which he has not confirmed that the injury was fatal in nature. In cross-examination he has admitted that no surgery was required, only medicines were sufficient to cure the injured. There was no previous enmity between the appellants and the accused persons. The dispute suddenly occurred. The dispute was very petty in nature, therefore, there cannot be intention of murder behind hitting by hard and blunt object. The wooden log or Lathi are not the lethal weapons. Therefore, merely the injury was caused on the vital part but it was not caused with the intention to kill. The learned Trial Court has rightly discussed the injuries and the conviction under Section 325 of IPC in Para-87 to 100 of the impugned judgment. Hence, we do not find any ground to admit this appeal for enhancement of charges and sentence.

7. Hence, this appeal is **dismissed**.

8. Any observation or finding recorded by us are only confined to disposal of this Criminal Appeal No.5705/2025. Same will not come in the way of deciding the criminal appeal filed by the accused challenging the conviction.

(VIVEK RUSIA)  
JUDGE

(JAI KUMAR PILLAI)  
JUDGE