

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

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

CRIMINAL APPEAL NO.2866 OF 2022

SALIKRAM VAISHYA

VS.

THE STATE OF MADHYA PRADESH,

APPEARANCE :

***SHRI UMA SHANKAR JAYASWAL WITH SHRI AGNIVEER DUBEY –
ADVOCATES FOR THE APPELLANT***

SHRI S.K. GUPTA – PANEL LAWYER FOR THE RESPONDENT/STATE

Reserved on *03.09.2024*

Pronounced on *20.09.2024*

J U D G M E N T

This criminal appeal under Section 374(2) of Code of Criminal Procedure, 1973 has been preferred by the appellant against the impugned judgment of conviction and order of sentence dated 07.03.2022 passed by IVth Additional Sessions Judge, Singrauli, District Singrauli (MP) in Session Trial No.73 of 2019 (*State of M.P. Vs. Salikram Vaishya and others*), whereby appellant has been convicted for commission of offence under Section 324 and 326 of IPC and has been sentenced to undergo

rigorous imprisonment for 01 year and fine of Rs.500/- for offence under section 324 of IPC and R.I. 7 years and fine of Rs.5000/- for offence under section 326 of IPC with default stipulation. All sentences are directed to run concurrently.

2. The case of the prosecution as unrevealed in F.I.R, in brief, is that on 15.08.2019 at around 8.40 P.M. complainant Thakur Dayal Singh lodged F.I.R stating that today between 7-7.30 P.M., he had gone to bring items from shop. When he was coming back to his home, he saw Demanpati and his daughter-in-law Jagmanti quarreling with his daughter-in-law Sunita. His daughter-in-law asked them not to take their bullock through their agricultural field. They both abused and assaulted his daughter-in-law by means of punches. When he attempted to pacify the quarrel, Salikram Vaishya armed with a Balua (club) attached with sharp edged weapon came and assaulted him causing injuries on his head, forehead, left side of chest and fingers of left hand. It was further stated that when his son Rajkumar came for his rescue, he was also assaulted causing injuries on his right shoulder and left knee. Threat to do death was also extended. F.I.R Ex.P/1 was registered and same was scribed by A.S.I. A.K.Dubey. Injured Thakur Dayal was referred for medical examination. Dr. Vijay Pratap (P.W.4) medically examined Thakur Dayal Singh (P.W.1), Sunita (P.W.2) and Rajkumr (P.W.5) and after examining the injured Dayal Singh,

he gave MLC report (Ex.P/3), X.-ray report (Ex.P/4), MLC reports of Sunita (Ex.P/5) and Rajkumar (Ex.P/6). He also gave query report Ex.P/7 and opined that fracture found on the left finger of Thakur Dayal is of temporary nature. In the course of investigation, Sub Inspector Ramji Sharma (P.W.6), prepared site map (Ex.P/2) and seized broken bangles from the spot and prepared seizure memo Ex.P/9. He recorded the statements of injured and eye witnesses under section 161 of Cr.P.C. He arrested accused Salikram, Demanpati and Jagmanti and prepared arrest memos Ex.P/10 to Ex.P/12. He recovered battle axe from Salikram and prepared Ex.P/15. After investigation charge sheet was filed for commission of aforesaid offences before JMFC who, in turn, committed the case to the court of Sessions for trial

3. Learned Addl.Sessions Judge framed the charges against the appellant and co-accused persons for commission of offence under Sections 294,323/34,326/34 and 506 of IPC with alternative charges. Appellant/accused refuted the charges and claimed to be tried.

4. In order to prove its case, prosecution examined six prosecution witnesses viz. Thakur Dayal Vaishya (P.W.-1), Sunita (P.W.-2), Kamlamati (P.W.-3), Dr. Vijay Pratap (P.W.-4), Rajkumar (P.W.-5) and S.I. Ramji Sharma (P.W.-6). In defence, no witness was examined.

5. Learned trial Court, after hearing both the parties, convicted Deman and Jagmanti for offence under section 323/34 of IPC and sentenced them to the period of 07 days already undergone by them while convicted appellant Salikram Vaishya for commission of offence under section 324 and 326 of IPC and sentenced him as mentioned herein-above in paragraph-1.

6. I have heard learned counsel for the parties and perused the trial court record and impugned judgment.

7. At the very outset, learned counsel for the appellant has submitted that appellant does not want to challenge his conviction for commission of aforesaid offence as recorded by learned trial Court, but has prayed for reduction of the jail sentence as appellant has already undergone imprisonment for more than 03 years in jail. It is, therefore, prayed that fine amount may be enhanced, but jail sentence may be reduced to the period already undergone by him in jail so far.

8. *Per contra*, learned counsel for the State has supported the findings of conviction and order of sentence recorded by learned trial Court, but has submitted that if jail sentence of appellant is reduced to the period already undergone then fine amount may be enhanced for commission of offence under section 326 of IPC.

9. Thakur Dayal (P.W.1) in his evidence has deposed that on 15.08.2019, at around 7.30 P.M. when he was at shop, he saw accused persons taking out their cattle from his agricultural field and when his daughter-in-law Sunita asked them not to do so. Appellant Salikram armed with club (Balua attached with sharp edged weapon) came and assaulted him causing injuries on his chest near neck, head, hand and skull. Accused Jagmanti and Deman also assaulted by means of Lathi. His son Rajkumar was also assaulted by Salikram causing injuries on his left shoulder and right leg.

10. The aforesaid evidence of Thakur Dayal (P.W.-1) finds corroboration from the evidence of his daughter-in-law Sunita (P.W.2), Kamlamati (P.W.3) and Rajkumar (P.W.5). Their evidence finds further corroboration from the medical evidence of Dr. Vijay Pratap (P.W.4) who has deposed that in medical examination he had noticed incised wound on left side of forehead, left side of chest below shoulder, upper lip, left thumb and middle finger of injured Thakur Dayal. It is also the evidence of Dr. Vijay Pratap that he had noticed fracture and incised wound on his right shoulder and right knee. Dr. Vijay Pratap further deposed that injuries found on the chest and middle finger of injured Thakur Dayal (P.W.1) were grievous in nature. As such, it is apparent that evidence of injured witnesses Thakur Dayal (P.W.1) and Rajkumar (P.W.5) stands corroborated not only from the

evidence of Sunita (P.W.2) and Kamlamati (P.W.3) but also from the medical evidence of Dr. Vijay Pratap Singh (P.W.4).

11. S.I. Ramji Sharma (P.W.6) has proved F.I.R. Ex.P/16, arrest memos Ex.P/10 to P/12, seizure memo of weapon Ex.P/15 seized from the possession of the present appellant. In their cross-examination nothing has been elucidated to discredit their evidence. Thus, the evidence of injured witnesses stands fortified from the evidence of eye-witnesses as well as from the medical evidence and promptly registered F.I.R. Thus, it is apparent that learned trial court has not committed any error in convicting appellant Salikram for commission of offence under section 324 of IPC in respect of injured Rajkumar (P.W.5) and under section 326 of IPC in respect of injured Thakur Dayal (P.W.1). Therefore, findings of conviction recorded by the learned trial court being not worth interference are hereby affirmed.

12. Learned counsel for the appellant has prayed to reduce the jail sentence of the appellant to the period already undergone by him so far. On perusal of the jail report, it is apparent that appellant Salikram, who is first offender, has undergone incarceration for a period of more than three years. He has no previous criminal background. On scanning the evidence on record, it is apparent that incident had happened in the heat of

passion as injured Thakur Dayal's daughter-in-law Sunita (P.W.2) had prevented them from taking their cattle from her agricultural field. Infact, altercation had taken place between daughter-in-law of Thakur Dayal (P.W.1) and accused Deman, Jagmanti and Salikram, in heat of passion, had caused injuries to him. Therefore, I am of the view that for a person, who is first offender, three years jail sentence already undergone by him so far is sufficient. Therefore, the jail sentence awarded to the appellant requires modification.

13. Consequently, the appeal is partly dismissed with regard to conviction of appellant under section 326 of IPC but is partly **allowed** to the extent of modification of jail sentence and accordingly, the jail sentence awarded to the appellant/accused in respect of offence under section 326 of IPC, is reduced from 07 years to the period already undergone by him so far. However, fine amount is enhanced from Rs.5000/- to Rs.15,000/-. Appellant is directed to deposit the aforesaid enhanced fine amount before the trial Court within a period of three months from today.

14. Upon deposit of fine amount, out of Rs.15,000/-, Rs.10,000/-(in place of Rs.5000/-) be given as compension to the injured Thakur Dayal

(P.W.1) and Rs.1,000/- (in place of Rs.500/-)to injured Rajkumar (P.W.5) under section 357 of Cr.P.C.

15. Registry/trial Court is directed to prepare super-session warrant/release warrant and to send the same to the Superintendent of jail/Jail authorities concerned with a direction that if appellant/accused is not required in any other case, he be released in this case forthwith.

16. It is clarified that if fine amount as quantified by this Court is not deposited within a period of three months from today by the appellant/accused, he would serve the entire jail sentence as awarded by the learned trial Court with default stipulations.

17. Learned trial Court is directed to ensure the aforesaid compliance.

18. Let a copy of this judgment alongwith the trial Court record be sent down to the trial Court concerned for information and necessary compliance through Principal District and Sessions Judge, District Singrauli.

(DINESH KUMAR PALIWAL)

JUDGE

MKL