

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

**HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 13<sup>th</sup> OF DECEMBER, 2023**

**CRIMINAL APPEAL No. 14195 of 2023**

**BETWEEN:-**

**1. ABHISHEK RAJ AHIRWAR @ BHATA S/O  
SITARAM AHIRWAR, AGED ABOUT 19 YEARS,  
OCCUPATION: LABOUR R/O MAHAKALI CHOWK  
SABJI MANDI PADAV THANA LARDGANJ DISTRICT  
JABALPUR (MADHYA PRADESH)**

**2. ANKIT RAIKWAR S/O SEETARAM AHIRWAR,  
AGED ABOUT 21 YEARS, OCCUPATION: LABOUR  
R/O SABJI MANDI LATWARI KA PADAV HANUMAN  
MANDIR KE PASS POLICE THANA LARDGANJ  
DISTRICT JABALPUR (MADHYA PRADESH)**

**.....APPELLANTS**

**(BY SHRI NARENDRA NIKHARE - ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH THROUGH  
POLICE STATION LORDGANJ R/O DISTRICT  
JABALPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**SMT. SEEMA SAHU – PANEL LAWYER FOR STATE AND SHRI ABHISHEK  
KUMAR PATEL – ADVOCATE FOR OBJECTOR**

**RESERVED ON : 04.12.2023**

**PRONOUNCED ON : 13.12.2023**

*This appeal having been heard and reserved for judgment, coming on for  
pronouncement this day, this court passed the following :*

**JUDGMENT**

1. This criminal appeal has been filed under Section 374 (2) of Cr.P.C by the appellants being crestfallen by the judgment dated 02.11.2023 passed by the Additional Sessions Judge, Special Court, No. 8 (Electricity Act), Jabalpur in Sessions Trial No.43/2001, whereby the appellant (Abhishek Raj Ahirwar) has been convicted for offences under Section 307/34 of IPC and Section 25 (1) (B) (B) (two counts) of Arms Act, sentencing him to undergo R.I. for five years with fine of Rs. 2,000/- (two times) and Rs. 4,000/- and Rs. 1,000/- respectively with default stipulations and appellant No.2 (Ankit Raikwar) has been convicted for offences under Section 307/34 of IPC and Section 25 (1) (B) (B) of Arms Act, sentencing him to undergo R.I. for one year with fine of Rs. 2,000/- (two times) and Rs. 4,000/- and Rs. 1,000/- respectively with default stipulation and observation that both the sentences would run concurrently.

2. Brief facts of the prosecution story, in short, is that on date 07.09.2020 Anshul Kushwaha along with his friend Anshul Sahu at 04:00 pm were going to Yadav Colony by motorcycle to get the photocopies. Anshul Kushwaha was driving the motorcycle. When they reached Ranital near Allahabad Bank, then appellants called Anshul Kushwaha by name and his friend and they stopped the motorcycle and then appellant Abhishek Raj

Ahirwar stated why he is abusing. When Anshul Kushwaha denied that he has not abused then Abhishek Raj Ahirwar assaulted with knife with intention to kill him. He assaulted Anshul Kushwaha on right side of the neck with knife. When P.W. 2 (Anshul Sahu) tried to save P.W. 1 (Anshul Kushwaha) then Abhishek Raj Ahirwar assaulted P.W. 2 (Anshul Sahu) with intention to kill with knife on his head, face and back of Anshul Sahu. On screaming, other persons present on spot came there. Then accused persons fled away from the spot and injured person were taken to Victoria Hospital at Jabalpur. Thereafter, police by following due process arrested the accused persons and registered the case against appellants. After necessary investigation, charge sheet has been filed by police against the appellants under Section 307/34 of IPC and Section 25 of the Arms act.

3. In turn, the case was committed to the Court of Sessions. Thereafter, appellants were charged for the offence under Section 307/34 and Section 25 of the Arms Act.

4. The appellants abjured their guilt and submitted that they have been falsely implicated in the present crime and prayed for trial.

5. In support of prosecution case, the prosecution examined seven witnesses, namely, P.W. 1 injured (Anshul Kushwaha), P.W. 2 injured (Anshul Sahu), P.W. 3 (Ayush Khatik), P.W. 4 (Dr. Somya Saini), P.W. 5 (Anil

Mishra - Sub Inspector), P.W. 6 (Dr. Arsha Rai), and (P.W. 7 Ram Prasad Maravi). No witnesses has been examined by the appellants in their defence.

6. Learned trial Court on appreciation of the evidence and argument advanced by the parties pronounced the judgment on 02.11.2023 by concluding the case and convicted the appellants for commission of the said offence and sentenced them as hereinabove.

7. Learned counsel for the appellants submitted that trial Court has not considered the material evidence available on record and committed grave error of law in not considering the material contradiction and omission in the statement of prosecution witnesses. He further submitted that doctor P.W. 4 (Somya Saini) and P.W. 6 (Dr. Arsha Rai) in their statements before the trial court clearly stated that injuries so received by the injured are not dangerous to life. He further submitted that appellants are young and having no criminal antecedents and facing trial. He further submitted that trial Court ignored that the both injured persons have entered into compromise with appellants on 29.08.2023. He further submitted that offence against the appellants is not covered under Section 307 of IPC and hence, prayed for acquittal.

8. Learned counsel for appellants further submitted that the seized article was not sealed on the spot and no evidence was produced by the prosecution before the court that he has properly deposited seized article in 'Malkhana'

and no 'Malkhana' register was produced before the trial court during evidence, so offence under Section 25 of Arms Act against appellant No. 1 Abhishek Raj Ahirwar was not properly proved and trial Court committed error to convict him under Section 25 of Arms Act. So, learned counsel for the appellants prayed for allowing the appeal and setting aside the judgment.

9. Learned counsel for the State, on the other hand, supported the impugned judgment and prayed for dismissal of this appeal by submitting that appellants assaulted two persons and caused multiple injuries to them. Hence, they are not entitled for any relief from this Court.

10. During this appeal, appellants and complainants, P.W. 1 (Anshul Kushwaha), P.W. 2 injured (Ansul Sahu) filed compromise application before this Court which is verified by the Registrar (Judicial) and statements were taken by the Registry. In statements given by P.W. 1 and P.W. 2, they accepted that they had filed compromise application without any undue influence.

11. In background of the arguments advanced by learned counsel for both parties, the point of consideration is whether the findings of the learned trial Court in convicting and sentencing the appellants under Section 307/34 of IPC and Section 25 of Arms Act are erroneous in eyes of law. At the outset, statement of injured P.W. 1 (Anshul Kushwaha) is required to be enumerated.

He has deposed that he knows (Abhishek Raj Ahirwar) and (Ankit Ahirwar). On date 07.09.2020, he had gone with his friend Anshul Sahu on motorcycle at 4:00 p.m. They were going to Yadav Colony to get the photocopies. He was driving the motorcycle. When they reached Ranital, then accused (Abhishek Raj Ahirwar) called him. Then they stayed there. Accused Abhishek Ahirwar came and stated why he is abusing him then he denied it. Then appellant (Abhishek Raj Ahirwar) assaulted him with knife with intention to kill him. He assaulted him on the right side of the neck. When he tried to catch Ankit Ahirwar, then he pushed him and thereafter, he assaulted with knife to Anshul Sahu on his head, neck and back. On their screaming, persons present around came there, then they flee away.

12. P.W. 1 (Anshul Kushwaha) has lodged report. Dehati Nalishi is Ex. P/1. PW. 2 (Anshul Sahu) also narrated the prosecution story in the same way and stated that Abhishek Raj Ahirwar assaulted P.W. 1 (Anshul Kushwaha) by knife on his neck and assaulted to him also by knife with intention to kill him.

13. P.W. 4 (Dr. Somya Saini) has found injury on the person of injured P.W. 1 (Anshul Kushwaha). When he examined him following injuries were found :-

*Lacerated wound on right cheek measuring about 8 cm x 5 cm. This wound was measuring 3 cm x 1.5 cm in internal side of mouth.*

14. P.W. 6 (Arsha Rai) has found following injuries on the person of injured P.W. 2 (Anshul Sahu), when she has examined him. She also examined P.W. 1 (Anshul Kushwaha). She has found following injuries on the body of P.W. 2 (Anshul Sahu) :-

*“1. One incised wound on left side of head measuring about 1.5 cm x 0.5 cm.*

*2. One incised wound on left shoulder measuring about 2 cm x 1 millimeter.*

*3. One incised wound on left cheek on lower side measuring about 2 cm x 0.5 millimeter.*

*4. Three abrasion marks on left hand on outer side measuring 0.5 mm x 0.5 mm.”*

15. Doctors have opined that injuries are not dangerous to life.

16. Learned counsel for appellants submitted that P.W. 1 Anshul Kushwaha and P.W. 2 (Anshul Sahu) have not supported the prosecution story. They have narrated in their cross-examination that accused have not assaulted, so evidence of P.W. 1 and P.W. 2 is not reliable.

17. On perusal of the record of trial Court, it was found that cross - examination of P.W. 1 and P.W. 2 were taken on 07.07.2022 and their cross-examination was deferred on that day and thereafter, on 23.02.2023 after a lapse of seven months, their cross-examination has been done.

18. The Apex court in case of **Akil alias Javed vs State (NCT of Delhi) (2013) 7 SCC 125**, it has been held in para Nos. 19 to 21, 27 to 33, 43 to 44 as thus :-

*“Inference that witness has been won over/improperly induced to change his stand and give false testimony-False/induced portion of testimony – when may be disregarded-witness completely changing stand in cross-examination and exculpating accused, as compared to chief examination in which said witness had inculpated accused-**cross-examination held after delay of 2 months due to adjournment sought by defence counsel – inference that may be drawn** – Identification of appellant accused Appellant refused to participate in test identification parade-PW 20 was a relative of PW 17 who lived in house of PW 17 was the complainant and person whose house was robbed PW 20 in chief examination identified appellant as the person who attempted to molest PW 17 and that when same was objected to by deceased (a friend of PW 17 who present at time of robbery) the appellant had shot ats-However, in cross examination PW 20 resiled from his earlier stand and stated that identification of appellant on earlier occasion was made at the instance of police inspector who had tutored him to make such a statement-PW 20 was not treated as a hostile witnesses spit of diametrically opposite version given by him as regards identification of appellant nevertheless, held, both courts below rightly proceeded to hold that identification made by PW 20 in his chief-examination cannot be ignored on basis that cross examination of PW 20 was conducted after 2 months gap due to adjournment granted at instance of accused, during which time PW 20 was won over-Reason for adjournment was a request on behalf of appellant that his counsel was busy in High Court Conviction and sentence imposed on appellant by courts below under Ss. 302 and 392 IPC, confirmed-Criminal Trial-witnessed-Hostile witness-who is-Extent to which testimony of hostile witness may be relied on – changed/hostile part of testimony. When may be disregarded.”*



19. In case of **Khujji @ Surendra Tiwari v. State of Madhya Pradesh**

**(1991) 3 SCC 627** it is held that :-

*“The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.*

*In the present case the presence of the eye-witnesses in the deceased at the place of occurrence could not be doubted. One of the witnesses was injured in the incident. Immediately after the incident within less than an hour, before there was any extraneous intervention he went to the police station, narrated the incident and lodged the FIR, since the FIR was a detailed document it is not possible to believe the investigating officer imagined those details and prepared the document. The detailed narration about the incident in the FIR goes to show that the subsequent attempt of the witness to disown the document while admitting his signature thereon, is a shift. The only area where the witnesses had not supported the prosecution and resiled from their earlier statements is regarding the identity of the assailants. The evidence of the eye witnesses was challenged by the prosecution in cross-examination because they refused to name the accused as the assailants of the deceased. The trial Court made no effort to scrutinise the evidence of these two witnesses even in regard to the factum of the incident.”*

20. In case of **Hemudan Nanbha Gadhvi vs State of Gujrat, (2019) 17**

**SCC 523** it is held that :

*“9. The family of the prosecutrix was poor. She was one of the five siblings. The assault upon her took place while she had taken the buffaloes for grazing. Her deposition was recorded nearly six months after the occurrence. We find no infirmity in the reasoning of the High Court that **it was sufficient time and opportunity for the accused to win over the prosecutrix and PW1** by a settlement through coercion, intimidation, persuasion and undue influence. The mere fact that PW2 may have turned hostile, is not relevant and does not efface the evidence with regard to the sexual assault upon her and the identification of the appellant as the perpetrator. The observations with regard to hostile witnesses and the duty of the court in *State v. Sanjeev Nanda*, are also considered relevant in the present context (SSC p.487, para 101)*

*“101.....If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.”*

21. It is true that P.W. 1 and P.W. 2 have stated against the appellants in their examination-in-chief and turned hostile, and in cross-examination they did not support the version stated in examination-in-chief, but their cross-examination was taken after a lapse of seven months, hence, it is clear that P.W. 1 and P.W. 2 are win over by the appellants. So version of the P.W. 1 and P.W. 2 in cross-examination was not reliable. So considering the evidence of P.W. 1 and P.W. 2, it was found that appellant (Abhishek Raj

Ahirwar) and co-accused (Ankit Raikwar) assaulted Anshul Kushwaha and Anshul Sahu with common intention and caused injuries to P.W. 1 and P.W. 2.

22. Learned counsel for the appellants submitted that injury caused to P.W. 1 and P. W. 2 are simple in nature and offence of the appellants are not found under the purview of attempt to murder. As per prosecution story, one single blow was caused by appellant (Abhishek Raj Ahirwar) to P.W. 1. No repeated blow is there. Initially, the MLC was conducted by Dr. Somya Saini and it clearly show that an incised wound on right cheek of P.W. 1 (Anshul Kushwaha) measuring 3.5 cm x 1.5 cm near mouth. She stated in examination-in-chief that injured have no problem on his nose and ear. She suggested for X-ray of jaw. She further stated that if there is no problem in speaking, then injury is simple. P.W. 6 (Dr. Arsha Rai) also not stated that injury is grievous.

23. The aforesaid statement of Dr. P.W. 4 and P.W 6 and medical report clearly show that single injury on the neck was found. Doctor had not stated that the injury was dangerous to life and no X-ray report has been produced by the prosecution. It appears that the injury of P.W. 1 (Anshul Kushwaha) is simple.

24. According to P.W. 6, there are four injuries on the body of Anshul Sahu

and all the injuries are found simple in nature and Dr. P.W. 6 has not stated that injury caused to P.W. 2 (Ansul Sahu) was dangerous to life and grievous.

25. Further, in view of the report and nature of injury, it cannot be ascertained that accused had intention to murder or knowledge of the fact that the injured would be killed by these injuries. Prosecution has also not set up that said injury was sufficient to cause death in ordinary course of nature.

In this regard Apex Court in the case of **Jai Narayan Mishra and ors. vs.**

**State of Bihar AIR 1972 SC 1764** has held thus : -

*“11. Taking the case of appellant Suraj Mishra, we find that he has been convicted under Section 307 of IPC and sentenced to five 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 ½ x ½ x chest wall deep (wound not probed) on the side of the right side of the chest. Margins were cleaned out. Suraj according to the evidence, had thrust a bhala into the chest when Shyamdatt has fallen as a result of a blow given by Mandeo with the farsa on his head. According to the doctor the wound in the chest was grievous in nature as the patient developed surgical emphysema on the right side of the chest. There was profuse bleeding and, accordingly 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 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 simple in 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 under Section 307 IPC, but Section 326 IPC. His conviction, therefore, under Section 307 of IPC is set aside and we convict him under Section 326 IPC. His sentence of five years' rigorous imprisonment will have to be reduced accordingly to three years' rigorous imprisonment."*

26. **In case of Mohinder Singh vs State (Delhi Administration)**

reported in AIR 1986 SC 309 it is held that :-

*"Grievous hurt caused by the blunt object like 'lathi' can fall within Section 325 of IPC and not Section 326 of IPC. Likewise in other case Halke vs. State of M.P. reported in AIR 1994 SC 951 wherein it is held that accused caused death of deceased by inflicting blows to him with sticks. Head injury proved to be fatal and deceased died after about a week. In this case accused was held liable for punishment under Section 325 of IPC."*

The following facts of the aforesaid judgment is put-forth to refer herewith :-

*".....No doubt, the injury on the head proved to be fatal after a lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II of IPC. the injures found to the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."*

27. So as per aforesaid discussion, considering the evidence of P.W. 1 and P.W. 2 and medical evidence, in the considered view of this Court that

conviction of the appellants under Section 307/34 IPC cannot be sustained. Hence, the aforesaid analysis the conviction under Section 307/34 IPC is liable to be set aside and instead of that appellants are liable to be convicted under Section 324 of IPC (two times).

28. Appellant (Abhishek Raj Ahirwar) was also convicted under Section 25 (1) (B) (b) of Arms Act. In this regard, P.W. 7 Ram Prasad Maravi, Sub-Inspector stated in examination-in-chief that on date 14.09.2020 he took memorandum of Abhishek Raj Ahirwar and seized knife from the house of Abhishek Raj Ahirwar. Memorandum is P.W. 5 and seizure memo is Ex. P/7.

29. Perused the evidence of P.W. 7 (Ram Prasad Maravi). He has stated in examination-in-chief in para 13 that on date 14.9.2020 he seized knife from Abhishek Raj Ahirwar in police Station Lordganj campus.

30. P.W. 7 (Ram Prasad Maravi) in para 6 has stated that he seized knife from the house of the Abhishek Raj Ahirwar. On the other hand, in para 13 he says knife from Abhishek Raj Ahirwar was seized in police station campus. So, these statements are contradictory.

31. On perusal of Ex. P-7, it was found that knife was not sealed on the spot and there is no seal mentioned in Ex. P-7 and it was also not mentioned in Ex.P-7 that it was sealed on the spot.

32. In case of **Jasbir Singh v. State of Punjab, AIR 1998 SC 1660** Apex Court held that :-

*"If seized article was not sealed after seizure, thus case was not established by prosecution."*

33. P.W. 7 has not stated a single word in his evidence that after seizing the knife from the appellants, he properly kept it in police 'Malkaha.' He has not produced 'Malkhana' register before adducing evidence in trial Court.

34. In case of **State of Rajasthan vs. Gurmail Singh 2005 CRLJ 1746** Apex Court held thus :

*"No evidence to prove satisfactory that seal was found."*

In this case Apex Court held 'Malkhana' register was not produced in evidence to prove that seized article was kept in 'Malkhana.' So, seizure of the article was not properly proved by the prosecution.

35. So, perusal of the evidence in respect of Arms Act, evidence of P.W. 7 (Ram Prasad Maravi) is not reliable. He has not produced 'Malkhana' register to prove that article was kept properly in 'Malkhana' and no article was sealed on the spot when it was seized and P.W. 7 contradicts in his evidence in Paras 6 and 13 that there is no blood found on the knife, by which, it was not proved that this knife was used to commit the crime.

36. So as per above discussion, prosecution has failed to prove offence under Section 25 (1) (B) (B) of Arms Act against appellant (Abhishek Raj

Ahirwar). So conviction under Section 25 (1) (B) (B) of Arms Act is set aside.

37. In the present appeal, appellants and injured P.W. 1 (Anshul Kushwaha), P.W. 2 injured (Ansul Sahu) have entered into compromise. Statement was verified by the Registrar (Judicial). So considering the compromise between the appellants and injured, the appellants are acquitted under Section 324 of IPC because compromise has taken place between the appellants and accused.

38. Accordingly, appeal is allowed. The conviction and sentence given by the trial Court to the appellants is set aside and appellants are acquitted, If they are not required in jail in any other case, they be immediately released.

39. Fine amount, if any, deposited by the appellants before the trial Court shall be given to appellants.

40. Judgment regarding disposal of property stands confirmed.

41. Copy of this order be sent to learned trial court concerned for information. Let record be also sent to concerned trial Court.

42. Consequently, the appeal is **partly allowed and disposed of.**

**(HIRDESH)**  
**JUDGE**