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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 614 of 2005

Judgment reserved on 20.03.2026

Judgment delivered on 16 .04.2026

1. Jageshwar S/o. Amar Sai, Aged about 28 years,
2. Bindeshwar S/o. Amar Sai, Aged about 26 years,

Both are R/o. Village Agastpur, P.S. Surajpur, District Surguja (CG)

... Appellants (s)

versus

State Of Chhattisgarh Through Station House Officer, Police Station – Surajpur, District Surguja (CG)

... Respondent(s)

For Appellant (s)	:	Mr. Ajay Kumar Pandey, Advocate
For Respondent(s)	:	Ms.Prachi Singh, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This criminal appeal under Section 374 (4) of Cr.P.C. has been filed against the judgment dated 19.07.2005 passed by 1st Additional Sessions Judge, Surajpur, District Surguja in Sessions Trial No. 190 of 1999, whereby the appellants have been convicted and sentenced in the following manner:-

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Conviction	Sentence
U/s. 326/34 of the IPC	RI for 3 years and fine of Rs. 500/-in default of payment of fine to further undergo additional RI for 2 months.
U/s. 325/34 of the IPC	RI for 1 year and fine of Rs. 500/- in default of payment of fine to further undergo additional RI for 2 months.
U/s. 325/34 of the IPC	RI for 1 year and fine of Rs. 500/- in default of payment of fine to further undergo additional RI for 2 months.
U/s. 323/34 of the IPC	To pay fine of Rs. 500/-in default of payment of fine to further undergo additional RI for 2 months.

(Fine amount has already been deposited. All sentences are directed to run concurrently).

2. Case of the prosecution in brief, is that the complainant purchased land from the relative of Appellant No.1. On 27.01.1999 in the morning, the victims went to the field which has been purchased by them where the accused were doing agriculture work and when the victim prevented them then accused Jageshwar, wife, mother Kaushaliya and brother Bindeshwar started creating dispute and thereafter Appellant No.1 assaulted on the head of complainant with axe. Appellant No.2/Bindeshwar also caused injury to Ramaavatar then he fell there. When Kishmatbai intervened in the scuffle then the Appellant No.1 and 2 committed marpit with her. Moharsai and Sobhnath were also assaulted by the appellants and thereafter they fled from there. Injured

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were sent to hospital for medical examination. On the basis of report, FIR (Ex.P-3) under Section 307/34 IPC was registered against them before Police Station Lakhanpur District Surajpur. Statements of the witnesses were recorded. Spot map Ex.P-12 was prepared. Dying declaration of the injured (Ex.P-22) was registered. Appellants were arrested by arrest memo (Ex.P-32 to P-36).

3. After completion of the investigation, charge sheet was filed before the Court of Chief Judicial Magistrate Surajpur, who in turn committed the case to the Court of Additional Sessions Judge, Surajpur which was registered as Sessions Case No. 190 of 1999.

4. The prosecution in order to prove the guilt of the appellants examined 15 witnesses Kanhaiyalal (PW-1), Ramavatar (PW-2), Mohar (PW-3), Kishmat Bai (PW-4), Shobhnath (PW-5), Patwari Ramgopal Sahu (PW-6), Pawansai (PW-7), Vishwanath (PW-8), Dr. I.D. Gupta (PW-9), Medical Officer Dr. K.N. Sharma (PW-10), Ramprashad (PW-11), Tahsildar Shivkumar Tiwari (PW-12), Dr. K.C. Jain (PW-13), Sub Inspector H.R. Chandra (PW-15) and exhibited the documents from **Ex.P-1 to Ex.P-36**. Statements of the accused/appellants were recorded under Section 313 CRPC in which they denied the allegations made against them and pleaded their innocence and false implication in the case on account of old enmity. The appellants examined Feku Ram (DW-1) and Gahbar Ram (DW-2) in their support and exhibited documents from (Ex.D-1 to Ex.D-2).

5. After hearing the parties, learned Sessions Judge on the basis of material on record and upon considering the statements of the

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witnesses has passed the judgment of conviction and order of sentence against the appellants as mentioned above. Being aggrieved with the judgment of conviction and order of sentence, the appellants preferred this Criminal Appeal. The record of the case would demonstrate that during trial the appellants were remained in jail from 28.01.1999 to 14.05.1999 i.e. 3 months 18 days. This Court vide order dated 01.08.2005 has released the appellants on bail.

6. Complainant Ramavatar (PW-02), in his statement has stated that the land was purchased by him at Rs. 8000/- from father of Dakhal and the land was being cultivated by the appellants then he told them as to why they were cultivating the said field as he has already purchased it then Jageshwar assaulted on his head with axe and he fell down there. He has further stated that in the said incident his wife and son have sustained injuries as their hand got fractured. This witness in his cross-examination remained affirmed and has denied that he was having axe with him or Moharsai has kept spade, Kishmat Bai and Sobhnath were keeping lathi with them and also denied that he has assaulted Jogeshwar. This witness has further stated that earlier a case was also registered against them regarding same incident.

7. Moharsai (PW-3) in his statement has stated that appellant Jageshwar, with mother, wife and brother Bindeshwar have assaulted his father with *danda* and axe, as such his father and he himself have received injuries on their bodies and blood was oozing. This witness has further stated that the assault was started near nala. This witness has stated that his father Ramavatar has admitted in the hospital about one week. He

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further stated that his mother and brother Shobhnath have received injuries. Mother and wife of accused Jageshwar committed marpit with his mother and she sustained fracture on her hand and feet. Both were admitted in the hospital about 15 days. In the cross-examination by the defense nothing has been brought on record to rebut the said evidence.

8. Kishmat Bai (PW-4) has stated in her statement that Somarsai assaulted his husband with axe and Jageshwar with lathi. She has stated that when she reached the spot then Jogeshwar committed marpit with lathi and she received injuries on her hand and foot. Bindeshwar assaulted with lathi. Bindeshwar assaulted Bhobhnath with axe. In the cross-examination by the defense nothing has been brought on record to rebut the said evidence.

9. Sobhnath (PW-5) has stated that accused Bindeshwar assaulted him with axe as a result of which he sustained fracture on his left hand. Moharsai assaulted his father with axe. This witness has supported the case of the prosecution and reiterated the stand taken by Ramavtar and Kishmat Bai (PW-2 and PW-4). In the cross-examination by the defense nothing has been brought on record to rebut the said evidence.

10. Dr. I.D. Gupta (PW-9) examined injured Moharsai (PW-3), Ramavtar (PW-2), Kishmat Bai (PW-4) and Sobhnath (PW-5) and on medical examination following injuries were found on the bodies of the injured which are as under:-

Injured Moharsai (PW-3):-

(i) Bruise in the size of 1½x1x inch plus hematoma 6 x 4 cm on left forearm advised x-ray of left forearm.

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(ii) Bruise ½ x ½ on left scapula bone.

(iii) Hematoma 2 x 2 inch on left parietal bone behind left ear. He advised for x-ray. Injury was caused by hard and blunt object within six hours of his examination (Ex.P-15).

Injured Ramavtar (PW-2)

(i) Lacerated wound in the size of 3 ½ x ½ x 5cm deep on head at left parietal bone. Advised for x-ray of skull. Injury caused at head is grievous and he is in comma which was dangerous to life. Injury was caused by hard and blunt object within six hours of his examination (Ex.P-11).

Injured Kismat Bai (PW- 4)

(I) Lacerated wound in the size of ½ x ¼ x 1/5 right elbow joint

(ii) Hematoma 8 inch x 4 inch on left forearm plus fracture at radius ulna bone advised for x-ray left fore arm.

(iii) Hematoma 3 inch x 2 inch on right upper arm.

(iv) Hematoma 6 inch x 4 inch on right thigh

(v) Hematoma 3 inch x 2 inch on right anklet

(vi) Hematoma 6 inch x 4 inch cm on right scapular part.

(vii) Hematoma 3 inch x 3 inch on below right scapula bone on right scale of back.

(viii) Hematoma 5 inch x 3 inch on left scapular tooth. Injury No.2 was grievous in nature and rest of the injuries are simple in nature. The injuries were caused by hard and blunt object (Ex.P-14).

Injured Sobhnath (PW-5)

(I) Bruise 2 inch x 1 inch on orcid line forehead.

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(ii) Hematoma 4 inch x 3 ½ inch on left elbow joint. Advised x-ray of left elbow joint.

(iii) Hematoma 4 inch x 3 inch on left shoulder joint. Injuries were simple in nature (Ex.P-16).

11. Dr. K. N. Sharma (PW-10) has done x-ray of injured **Moharsai** and after x-ray he has not seen fracture and submitted his report (Ex.P-20). But he has found fracture on the upper part of right hand of Ramavatar and exhibited his report (Ex.P-14). This witness examined injured **Kishmat Bai** wherein he has seen two fractures on ulna bone which are grievous in nature and exhibited his report (Ex.P-19). Shobhnath was advised for x-ray, wherein fracture at lower part of humerus bone was detected vide Ex.P-16.

12. Learned counsel for the appellants would submit that the appellants had also suffered injuries and to substantiate the injuries sustained by them he has exhibited D/1 and D/2 statement of accused which has not been considered by the trial Court. He would further submit that learned trial Court has also not taken into consideration the statement of defense witness Faku Prasad (DW-1) and Gahbarram (DW-2) who have deposed before the trial Court that Somarsai was not in the place of occurrence and other witness Gahbarram (DW-2) has deposed that the victims have come with lathi and axe and Ramavatar assaulted Jageshwar with axe and when Jageshwar prevented Ramavatar then he has caused injury to him with stick, thus the trial Court's finding is perverse, contrary to the evidence and material on record by the defense. He would further submit that there is doubt over initiation of

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incident or assault or use of weapon for commission of offence, therefore, the appellants are entitled to get benefit of doubt.

13. Learned counsel for the appellants would further submit that even the prosecution was unable to establish the offence under Section 326 IPC as there are so many contradictions and omissions in the statements of the prosecution witnesses which are not reliable, therefore, the trial Court has erred in analyzing the evidence produced before it. He would further submit that the prosecution is unable to prove the essential ingredients of offence under Section 326 IPC i.e. the intention or knowledge of the appellants to commit such offence and all the injuries are simple in nature and not grievous hurt. He would further submit that the incident pertains to the year 1999 and more than 27 years have elapsed since then. The appellant No.1 remained in custody for three months from 28.01.1999 to 14.05.1999 and the Appellant No.2 remained in custody for one month from 28.01.1999 to 14.05.1999, therefore, he would pray for reducing the sentence already undergone by them.

14. Per contra, learned counsel for the State would submit that according to the prosecution case, the appellants had suspicion that the complainant intended to occupy their land, therefore, without any personal grievance against the complainant, they assaulted them, causing various injuries including the fracture at radius ulna bone of Kishmat Bai and fracture on the left hand of Sobhnath, therefore, the trial Court has not committed any mistake in awarding the rigorous imprisonment of three years to the appellants. He would further submit that the trial court after appreciating

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the evidence and material on record has convicted and sentenced the appellants which does not suffer from perversity or illegality. He would further submit that the prosecution has proved its case beyond reasonable doubt and there is no material available on record to set aside the well reasoned finding recorded by the trial court warranting any interference by this court and would pray for dismissal of appeal.

15. I have heard learned counsel for the parties and perused the records of the trial Court.

16. From the submissions made by the parties the point emerged for determination is whether conviction of the appellants for commission of offence under Section 326/34, 325/34, 323/34 is legal and justified or not ?.

17. To appreciate the point emerged for determination, it is expedient for this Court to extract Sections 320 and 326 IPC.

Section 320 IPC defines grievance 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.”

Section 326 IPC;- Voluntarily causing grievous hurt by dangerous weapons or means.-- Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance or by means of any poison

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> or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

18. On a close scrutiny of the evidence of the injured witnesses, it is found that the witnesses have not only named the appellants but also enumerated the specific role played by them in the incident. The evidence of injured Ramavtar (PW-2) would demonstrate that the land purchased by him was cultivated by the appellants then he objected as to why they were cultivating the said field, on this the appellants being armed with axe and lathis came there and after assaulting them, fled away from the place of occurrence. Jageshwar and Bindeshwar were having axes and other appellants were having lathis in their hands. All the injured witnesses made the same statement and corroborated to each other. They were cross-examined at length, but nothing could be elicited to discredit their testimonies. On further appreciation of the evidence available on record, it is quite vivid, that four persons became injured in the incident. The evidence in this regard is well corroborated by the ocular evidence. The evidence of the injured witnesses Kishmat Bai (PW-4) and Sobhnath (PW-5) is well corroborated by the medical evidence of Dr. I.D. Gupta (PW-9) as well as x-ray reports (Ex.P-18 to Ex.P-21). From seizure memo (Ex.P-1) weapon of assault axe was seized from place of occurrence and there is no dispute about the place of occurrence.

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19. From appreciation of evidence and from above discussion, it is quite vivid, that the appellants have assaulted the victims by axe and lathis caused grievous hurt to all the victims. Thus the prosecution has proved the case beyond reasonable doubt for commission of offence by the appellants under Section 326/34 IPC. Learned trial Court on appreciation of evidence has rightly recorded in paragraph-22 that the assault was not committed with intention or knowledge to commit murder and on sudden provocation the injuries have been caused, as such the appellants have not committed the offence under Section 307 IPC but have committed the offence under Section 326/34 IPC, therefore, the finding recorded by the learned trial Court that since the injuries sustained by the victim are grievous in nature as enumerated in Section 320 IPC, which are supported by medical evidence on sudden provocation, therefore, offence under Section 307 IPC has not been made out but offence under Section 326 IPC is made out which cannot be held to suffer from perversity or illegality.

20. It is equally well settled legal position of law that before conviction under Section 326 of IPC can be passed, one of the injuries in Section 320 of IPC must be strictly proved as held by Hon'ble Supreme Court in the case of **Mathai v. State of Kerala (2005) 3 SCC 260** wherein the Hon'ble Supreme Court has held that If the hurt that has been caused falls outside any of the categories mentioned in Section 320 of IPC, it can only be a simple hurt as defined in Section 319 of IPC, punishable under Section 323 not under Section 324 or 326 IPC. If the evidence bought on record by the prosecution is examined in terms of parameter

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laid down by the Hon'ble Suprmne Court in the case of Mathai (supra) it is quite vivid that injuries sustained by injured **Kishmat Bai and** injured **Shobhnath** were grievance in nature which were caused by hard and blunt object, thus it falls within the category of clause seventhly of Section 320 IPC and it has been caused by hard and blunt object i.e. axe. Thus, the ingredients as defined in Section 320 IPC are fulfilled, therefore, conviction of the appellants under Section 326 /34 IPC cannot be found faulty or suffers from perversity. The Hon'ble Supreme Court in the case of **Mathai (supra)** has held as under:-

> 16. The expression "any instrument which used as a weapon of offence is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalization can be made.
> 17. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted by this Court in State of UP v. Indrajeet Alias Sukhatha (2000 (7) SCC 249) there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. As noted above the evidence of Doctor (PW 5) clearly shows that the hurt or the injury that was caused was covered under the expression 'grievous hurt' as defined under Section 320 IPC. The inevitable conclusion is that a grievous hurt was caused. It is not that in every case a stone would constitute a dangerous weapon. It would depend upon the facts of the case. At this juncture, it would be relevant to note that in some provisions e.g. Section 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Section 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 and 326 would be applicable.

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21.It is pertinent to mention here that Axe is used for causing grievous hurt which qualifies that by its use it is likely to cause death, therefore, the prosecution need not further requires to establish that such axe is likely to cause death and from its very nature one could reasonably predict that by its use as a weapon of offence, death would be probable. It is well settled legal position of law that the expression “any instrument, which used as weapon of offence, is likely to cause death” should be construed with reference to the nature of the instrument and not the manner of its use as held by the Hon’ble Supreme Court in the case of **Anwarul Haq v. State of U.P., (2005) 10 SCC 581** wherein the Hon’ble Supreme Court has held in paragraph-12 as under:-

> 12. Section 325 provides that "Whoever except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to swallow or to receive into the blood, or by means of any animal" can be convicted in terms of Section 324. The expression "an instrument, which used as a weapon of offence, is likely to cause death" should be construed with reference to the nature of the instrument and not the manner of its use. What has to be established by the prosecution is that the accused voluntarily caused hurt and that such hurt was caused by means of an instrument referred to in this Section.

22. From perusal of the record, it is quite vivid that learned trial Court, on the basis of evidence and material on record, particularly the statement of the victim and also opinion of the Doctor which clearly suggests that the injuries must have been caused by axe, are grievous in nature and injuries sustained by **Kishmat Bai and** injured **Shobhnath** are grievous

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in nature and the injuries sustained by other injured are simple in nature, therefore, the learned trial Court has rightly convicted the appellants under Section 326/34, 325/34 and 323/34 IPC.

23. Even it is well settled position of law that an accused can be convicted on the basis of the sole testimony of the victim, provided the Court finds the testimony to be credible, trustworthy and of sterling quality. The Hon'ble Supreme Court has examined the evidentiary value of injured witness in case of **Balu Sudam Khalde and Another vs State of Maharashtra {2023 (13) SCC 365}** wherein the Hon'ble Supreme Court has held as under :-

> "26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:-
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
> (b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.
> (c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.
> (d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.
> (e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.
> (f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

24. From the evidence of the victims Ramavatr (PW-2), Sobhnath (PW-5), Kismat Bai (PW-4) and Moharsai (PW-3), it is manifest that the accused

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persons, acting in furtherance of their common intention, assaulted the victims. Presence of all the accused at the scene substantially facilitated the successful commission of the offence. The act was carried out pursuant to a pre-arranged plan, and the commission of the offence would not have been possible without the aid and participation of the other accused. It is well settled that for fastening liability with the aid of Section 34 of the IPC, each accused must participate in the commission of the offence in some manner, which stands duly established in the present case. Consequently, the submission advanced by the learned counsel for the appellants that all the accused cannot be convicted with the aid of Section 34 of the IPC is misconceived and is liable to be rejected.

25. It is well settled position of law that element of participation in the commission of offence, is the chief feature that distinguishes Section 34 of the IPC from Section 149 of the IPC and other Sections. The Hon'ble Supreme Court in case of **Vasant @ Girish Akbarasab Sanavale and Another vs. The State of Karnataka {2025 INSC 221}** has examined the provisions of Section 34 of the IPC as under:-

> "86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder", (pp. 457-458).
> 87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.

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> 88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.
> 89. In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. [See: Om Prakash(supra)]
> 90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind."

26. So far as conviction of the appellants under Section 325/34 and 323/34 is legal, justified and does not suffer from perversity or illegality as appellants have caused grievance injuries by dangerous weapon axe as defined in Section 325 IPC to the victim Kishmatbai by causing fracture at ulna bone as supported by medical evidence also. Thus the conviction of the appellants for offence under Section 325/34 IPC is affirmed.

27. So far as conviction of the appellants under Section 323/34 IPC is concerned, the prosecution has proved its case beyond reasonable

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doubt that the injuries caused to Moharsai are simple in nature which are supported by medical evidence, therefore, conviction of the appellants under Section 323/34 IPC cannot be found faulty or suffers from perversity or illegality which does not warrant interference by this Court.

28. The evidence of the victims has not been shaken at any stage, nor the accused have been able to rebut the stand of the victims by leading cogent evidence, therefore, the finding of the learned trial Court holding the accused guilty for the offences punishable under Sections 323/34,325/34, 326/34 of the IPC does not suffer from any perversity or illegality warranting interference by this Court. As such, the impugned judgment of conviction passed by the learned Sessions Judge, Surajpur in Sessions Trial No. 190/1999 is hereby affirmed.

29. Further submission of the counsel for the appellants is that the appellant No. 1 remained in custody for three months from 28.01.1999 to 14.05.1999 and the Appellant No.2 remained in custody for one month from 28.01.1999 to 14.05.1999 and since the incident pertains to 1999 and more than 27 years have already been lapsed, as such, the sentence may be reduced to the period already undergone by the appellants is being considered by this Court.

30. Before adverting to the submissions, it is expedient for this Court to examine and consider what are the facts and circumstances, and the gravity of the offence to apply the principle of already undergone is being examined in terms of law laid down by the Hon'ble Supreme Court in the case of **Parameshwari vs. The State of Tamilnadu and**

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others, reported in 2026 INSC 164 wherein the Hon'ble Supreme Court has examined about mitigating factors and held in paragraphs 22 and 34 as under:

> "22. The objective of punishment is to create an effective deterrence so that the same crime/actions are prevented and mitigated in future. The consideration to be kept in mind while awarding punishment is to ensure that the punishment should not be too harsh, but at the same time, it should also not be too lenient so as to undermine its deterrent effect.
>
> 34. The misplaced understanding of various courts in treating compensation as a substitute of sentence is both a matter of concern and a practice which should be condemned. We have observed a trend amongst various High Courts wherein the sentences awarded to the accused persons by the Trial Court are reduced capriciously and mechanically, without any visible application of judicial mind. Considering the gravity of the situation as thus, we have culled out certain basic factors, which are to be kept in mind by the courts while dealing with imposition of sentence, in line with the view taken by this Court in the aforementioned cases. The said factors are enunciated as below:
>
> A. Proportionality: Adherence to the principle of *"just deserts"* ought to be the primary duty of the courts. There should be proportionality between the crime committed and the punishment awarded, keeping in consideration the gravity of the offence.
>
> B. Consideration to Facts and Circumstances:
>
> Due consideration must be given to the facts and circumstances of the case, including the allegations, evidence and the findings of the trial court.
>
> C. Impact on Society: While imposing sentences, the courts shall bear in mind that crimes essentially impair the social fabric of the society (of which the victim(s) is/are an indispensable part) and erodes public trust. The sentence should be adequate to maintain the public trust in law and administration, however, caution should also be taken, and the Court shall not be swayed by the outrage or emotions of the public and must decide the question independently.
>
> D. Aggravating and Mitigating Factors: The courts, while deciding the sentence or modifying the sentence,

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> must weigh the circumstances in which the crime was committed, and while doing so, the court must strike a fair balance between the aggravating and the mitigating factors."

31. From the above stated legal position, it is quite vivid that this Court has to consider the gravity of the offence and the manner in which offence has been committed. From the facts, it is quite vivid, that the victims sustained injuries which are grievous in nature. However, looking to the fact that incident pertains to year 1999 and more than 27 years have already been lapsed, and the appellants are not having any past criminal antecedents, they have not misused the liberty of bail granted to them during the trial and even during pendency of the appeal, therefore, I am of the view that the sentence can be reduced to 09 months instead of 3 years for offence under Section 326/34 IPC and 06 months each for offence under Section 325/34 IPC and 03 months each for offence under Section 323/34 IPC, all sentences are directed to run concurrently with enhancement of fine amount from Rs. 500/- to Rs. 5,000/- for the offence under Section 326/34 of IPC and from Rs. 5,00/- to Rs. 3,000/- for the offence under Section 325/34 of IPC and Rs. 5,00/- to Rs. 2,000/- for the offence under Section 323/34 of IPC. The difference amount of fine shall be deposited by the appellants before the trial Court within two months from the date of receipt of copy of this order and the same shall be payable by the trial Court to the victims as per Section 357(3) of the Cr.P.C. as compensation within further one month from the date of deposit of fine amount by the appellants.

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32. Accordingly, the appeal is allowed in part. The appellants are on bail. Their bail bonds and surety bonds are cancelled. They are directed to surrender before the trial Court within two months from the date of judgment passed by this Court to serve out the remaining part of jail sentence as reduced by this Court. The appellants are entitled to get set off, of the period of sentence already undergone by them as per provision of Section 428 CrPC/468 of BNSS. In case, the appellants fail to surrender within time period as given by this Court, the trial court will proceed against them in accordance with law and send compliance report to this Court.

33. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for compliance.

Sd/-

(Narendra Kumar Vyas)
Judge

santosh