

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**  
**(DIVISION BENCH: HON. MR. JUSTICE S.K. SETH &**  
**HON. MR. JUSTICE PRAKASH SHRIVASTAVA)**

**Criminal Appeal No.601/2001**

- 1/ Pappu @ Mohd Yunus  
S/o Abdul Fazal,  
Aged - 27 year,  
R/o - 135, Gandhi Nagar, Indore
- 2/ Sardar @ Chhotiya S/o Abdul Fazal,  
Aged - 21 years,  
R/o - Gandhi Nagar, Indore
- 3/ Akram @ Lala S/o Abdul Fazal,  
Aged - 22 years,  
R/o - 24, Gandhi Nagar, Indore
- 4/ Iqbal @ Simran S/o Akil Mohammad,  
Aged - 22 years,  
R/o - Sarangpur, Distt. Shajapur (M.P.)

.... Appellants

**Vs.**

State of Madhya Pradesh,  
Through P.S. Sendhwa,  
District - Barwani.

.... Respondent

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**Shri Jai Singh, learned senior counsel with Shri Raghuveer Singh Adv., for the appellants.**

**Shri Girish Desai, learned Dy. A.G. for the respondent/  
State.**

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**Whether approved for reporting:-**  
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**JUDGMENT**

(Delivered on 20/5/2011)

**Per Prakash Shrivastava, J :-**

1/ By the judgment dated 14.5.2001 passed by the Ist Additional Sessions Judge, Khargone - Sendhwa in S.T. No.169/96, the appellant no.1 Pappu alias Mohd. Yunus has been convicted for offence under Section 302 IPC and sentenced for life imprisonment and fine of Rs.1,000/- and in default 6 month's RI, and the appellants no.2 to 4 namely Sardar @ Chhotiya, Akram @ Lala and Iqbal @ Simran have been convicted for offence under Section 302/34 IPC and sentenced for life imprisonment and fine of Rs.1,000/- and in default 6 month's RI. All the appellants have also been convicted for offence under Section 323/34 IPC and sentenced for six months RI.

2/ Prosecution case, in brief, is that on 25.5.1996 in the evening PW-1 Jafar on receiving the intimation, had reached to the house of Yusuf and found that the appellants were beating Yusuf in front of his house. Pappu had given a lathi blow on the head of Yusuf and the other appellants had also given the lathi blows and caused injury from stone. Jafar and Basant Patil were also injured when they had tried to intervene. Jafar had taken Yusuf to the hospital, where Yusuf was declared dead. The FIR (Ex.P/1) was lodged by PW-1 Jafar at police Station Sendhwa, District Khargone on the same day at 7:00 p.m. Police had filed Chalan against the appellants after completing the investigation

and the appellants were charged for offences, for which they have been respectively convicted.

3/ Learned counsel appearing for the appellants submitted that the conviction of the appellant no.1 for offence under Section 302 IPC is unsustainable. He further submitted that the trial Court has wrongly convicted the appellants no.2 to 4 namely Sardar, Akram and Iqbal with the aid of Section 34 IPC, though there is no evidence that they were sharing common intention. He further submitted that the appellants no.2 to 4 can at the most be convicted for offence under Section 323/34 for causing simple injuries to Yusuf. He has further submitted that the injuries disclosed by PW-1 Jafar and PW-4 Jaid Ahmed are not corroborated by the medical evidence.

4/ Learned counsel appearing for the respondent/State supporting the judgment submitted that no error has been committed by the trial Court in convicting the appellants and sentencing them.

5/ We have heard the learned counsel for the parties and have minutely perused the record of the case.

6/ It is not disputed before this Court that death of Yusuf was homicidal in nature as is also proved from the postmortem report (Ex.P/20) and the statement of Dr. Laxminarayan Tilker

(PW-9), who had conducted the autopsy of the deceased.

7/ So far as the offence under Section 302 IPC as against the appellant no.1 Pappu @ Mohd. Yunus is concerned, the three eyewitnesses namely PW-1 Jafar Ahmed who is injured witness and the brother of the deceased, PW-2 Juned , brother of the deceased and PW-4 Jaid Ahmed, son of PW-1 Jafar Ahmed, have clearly stated before the Court that appellant no.1 Pappu had given a lathi blow on the head of the deceased Yusuf. Their statements disclose that fight between the appellants and PW-4 Jaid Ahmed had taken place since the appellants used to tease him by calling him “Javed Miyadad”. These witnesses have remained firm in their statement about giving of lathi blow by PW-1 Pappu on the head of deceased Yusuf and nothing material has come in their cross-examination to disbelieve their version. Their presence on the spot is shown in the FIR (Ex.P/1), which was lodged by PW-1 Jafar merely 45 minutes after the incident.

8/ Ex.P/20 the postmortem report of Yusuf and the statement of PW-9 Dr. Laxminarayan Tilker indicate that the deceased had suffered linear abrasion in right thigh, scratch of 1 x 1/2 inch on left scapula, contusion 6 x 2 inch in lumber region and lacerated wound 2 x 1 inch x bone deep in the occipital region, resulting into fracture. The doctor had opined that Yusuf

had died due to the injuries received on the head. The account of the eyewitnesses establishes that the head injury to the deceased was caused by appellant no.1 Pappu @ Mohd. Yunus, therefore, he has rightly been convicted by the trial Court for offence under Section 302 IPC and sentenced to life imprisonment with fine and default stipulation.

9/ Learned counsel for the appellant relying upon the Division Bench judgment of this Court dated **28.1.2010 in Criminal Appeal No.638/1999 in the matter of Mustaq V. State of M.P.**, has prayed for converting the conviction of the appellant no.1 Pappu from Section 302 IPC to Section 325 IPC. We are afraid that such a submission of the counsel for the appellants cannot be accepted because the offence under Section 302 IPC has duly been proved against the appellant no.1 Pappu. Even otherwise the benefit of the said judgment cannot be given to the appellant since that judgment was rendered on a different fact situation, where both the parties had sustained injuries

10/ So far as the appellants no.2 to 4 namely Sardar, Akram and Iqbal are concerned, these appellants have been convicted under Section 302/34 IPC. As noted earlier as per PW-1 Jafar Ahmed, PW-2 Juned and PW-4 Jaid Ahmed some altercation had initially taken place between the appellants and

PW-2 Juned and PW-4 Jaid Ahmed, since the appellants were calling Jaid Ahmed as “Javed Miyadad” as he was a good cricket player. The appellants had initially gone back but had later returned armed with lathi and stone. Juned and Jaid Ahmed had gone inside their house but in the meanwhile Yusuf came, who tried to pacify the appellants but he was attacked by them. According to these eyewitnesses, appellant no.2 Sardar @ Chhotiya had caused injury with Lathi on the back of Yusuf, appellant no.3 Akram @ Lalu on the shoulder of Yusuf and appellant no.4 Iqbal alias Simran had caused injury from stone on the thigh of Yusuf. The statement of Dr. Laxminarayan Tilker (PW-9) and the postmortem report (Ex.P/20) indicate that these three injuries caused by appellant no.2 to 4 were simple in nature, which did not result into the death of Yusuf. It is also worth nothing at this stage that according to the eyewitnesses, the appellants no.2 and 3 namely Sardar and Akram were carrying Lathi and they had caused injury with Lathi on the back and shoulder of Yusuf but according to PW-9 Dr. Laxminarayan Tilker, only scratch was found on left scapula and contusion on the lumbar region of the deceased. In terms of the judgment of the Supreme Court in the matter of **Jadu Yadav V. State of Bihar** reported in **AIR 1994 SC 957**, such injuries could not be

caused by the Lathi blow given by the appellants no.2 and 3.

11/ Even otherwise the appellants no.2 to 4 had no previous enmity with deceased Yusuf and there was no pre-arranged plan or common intention on their part to cause murder of Yusuf, specially when the altercation between the appellants and Jafar and Jaid Ahmed had taken place on a small issue of teasing Jaid Ahmed. This clearly indicates that the appellants no.2 to 4 were not sharing any common intention with the appellant no.1 Pappu, who had given fatal blow on the head of the deceased. Thus the conviction of the appellants no.2 to 4 for offence under Section 302/34 cannot be sustained and is hereby set aside.

12/ So far as appellants no.2 to 4 are concerned, the evidence on record indicates that the appellants no.2 to 4 had come to the spot to cause simple injuries to Jafar or Jaid Ahmed, since Yusuf had come in the meanwhile, therefore, they had caused simple injuries to Yusuf. Therefore, they are convicted for committing offence under Section 323/34 IPC for causing simple injury to Yusuf.

13/ So far as the offence under Section 323/34 against all the appellants is concerned, the three aforesaid eyewitnesses of the incident have stated that when PW-1 Jafar Ahmed and Basant

Patil had tried to intervene and the appellants had caused injuries to them from the respective weapons. PW-9 Dr. Laxminarayan Tilker had examined the injuries of Basant Patil and prepared the MLC (Ex.P/18) in which he had found five injuries in the form of scratch, abrasion, incised wound and swelling, out of which 4 were caused by hard and blunt object. He had also examined the injuries of PW-1 Jafar Ahmed and had found three injuries in the form of scratch and swelling, and had prepared the MLC (Ex.P/19). Thus from the above evidence it is proved that the appellants had caused simple injuries to Jafar Ahmed and Basant Patil, therefore, they have rightly been convicted for offence under Section 323/34 IPC.

14/ In view of the above, the appeal is partly allowed by maintaining the conviction and sentence of the appellant no.1 Pappu @ Mohd. Yunus for offence under Section 302 IPC and under Section 323 IPC. The sentences awarded to him will run concurrently.

15/ The appellants no.2 to 4 namely Sardar @ Chhotiya, Akram @ Lala and Iqbal @ Simran are acquitted of offence under Section 302/34 IPC but convicted for offence under Section 323/34 IPC for causing injury to Yusuf and they are sentenced for the period already undergone. The appellants no.2



to 4 namely Sardar @ Chhotiya, Akram @ Lala and Iqbal @ Simran are on bail, their bail and surety bonds stand discharged.

16/ It has been pointed out during the course of argument that the appellant no.1 Pappu @ Mohd. Yunus was released on bail by this Court but he has jumped the bail and is absconding. Let a perpetual warrant of arrest be issued against the appellant no.1 Pappu alias Mohd. Yunus for his arrest and production before the trial Court for undergoing the remaining part of the jail sentence.

**(S.K. SETH)**  
**J u d g e**

**(PRAKASH SHRIVASTAVA)**  
**J u d g e**

*Trilok/-*