

(1)

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

**Cr. A. No. 1207/2001**

Ramlal Nouria

Vs.

State of M.P.

**As Per : G.S.Solanki, J.**

Shri Abhinav Dubey, Advocate for appellant.

Shri R.K.Kesarwani, PL for State.

**Judgment heard on : 29.3.2011**

**Judgment delivered on : 30.3.2011**

**J U D G M E N T**

1. The appellant has preferred this appeal under section 374(2) of Cr.P.C. being aggrieved by judgment dated 18.7.2001 passed by the Additional Sessions Judge, Gadarpura, District Narsinghpur (M.P.) in S.T. No. 105/2000 whereby the appellant has been convicted under section 326 of IPC and sentenced to R.I. for 3 years and fine of Rs. 1000/- with default stipulation.
2. The prosecution's case in short is that on 19.5.2000 at about 3:00 PM, when complainant Jeevan Lal Nouria (PW-3) was returning to his home from the bank, near the house of Patel, appellant Ramlal assaulted him by an Axe on his head and co-accused Kailash Nouria (acquitted) has assaulted him by lathi. Complainant lodged a report (Ex.P-4).

(2)

3. After usual investigation, appellant and co-accused persons were charge sheeted before the trial Court. Trial Court framed the charges under section 307/34 of IPC.
4. The appellant abjured the guilt and pleaded that he has been falsely implicated in the case.
5. On appraisal of evidence on record, co-accused Kailash Nouria has been acquitted, however, the appellant has been convicted and sentenced as mentioned hereinabove, hence this appeal.
6. Learned counsel for the appellant has submitted that he is not challenging the conviction recorded by the trial Court under section 326 of the IPC, however, the appellant is aged 52 years, the incident took place on the spur of the moment and he remained in jail from 2.6.2000 to 8.7.2000, the ends of justice would be met in case appellant is sentenced for the period already undergone and fine amount is enhanced.
7. Learned counsel for the State has justified the findings recorded and supported the judgment passed by the trial Court.
8. I have perused the impugned judgment, evidence and other material on record. As before this Court conviction recorded by the trial Court has not been challenged, the finding recorded by the trial Court with respect to conviction of the appellant under section 326 of IPC is hereby affirmed, however, considering the fact that

(3)

incident took place on the spur of the moment, 11 years before in the year 2000 and appellant remained in custody for about one month and six days, I am of the view that ends of justice would be met in case appellant is sentenced for the period already undergone (about one month and 6 days) and fine amount is enhanced to Rs. 5000/-.

9. Resultantly, the appeal is partly allowed. Conviction of the appellant recorded by the trial Court under section 326 of IPC is affirmed. Sentence awarded by the trial Court is set aside. Appellant is sentenced for the period already undergone (approx. one month and six days) and fine of Rs. 5000/-. In default, appellant has to undergo S.I. For 10 days. Appellant is on bail, his bail bond and surety bond are discharged.

**(G.S.Solanki)**  
**Judge**

PB