

**HIGH COURT OF JUDICATURE AT JABALPUR**  
**(M.P.)**  
**Criminal Appeal No. 1462/2005**

PRESENT :  
HON'BLE SHRI JUSTICE **G.S. Solanki**

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Pappu @ Arvindra & another  
Versus.  
State of Madhya Pradesh

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Shri Vijay Shukla, learned counsel for the  
appellants.

Shri Santosh Yadav, Panel Lawyer for the State.

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**Date of hearing: 30/06/2011**  
**Date of Judgment: 30/06/2011**

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

Second Additional Sessions Judge, Damoh passed the impugned judgment dated 11/7/2005 in Sessions Case No. 252/1996 whereby the appellants have been convicted under Section 326 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for 3 years with fine of Rs. 3,000/-, with default stipulations.

2. Being aggrieved the appellants have preferred this appeal under Section 374(2) of the Code of Criminal Procedure.

3. It is admitted fact on record that complainant Badri Singh Thakur and appellants have entered into a compromise. They have settled their dispute amicably

and filed an application for permission to compromise. Since appellants are convicted under Section 326 of IPC, same is not compoundable, therefore, application was dismissed with observation that the fact of compromise will be taken into consideration at the time of consideration of sentence.

4. Prosecution case is short is that on 3/5/1993 complainant Nekpal Singh (PW11) was informed by one Ratnesh Dubey that his brother Badri Singh was beaten by Arvind and others. On receiving the aforesaid information, complainant Nekpal Singh went to Vivekanand Colony where he found that Badri Singh was injured. On query Badri Singh informed him that appellants Pappu @ Arvind, Pushpendra Singh, Raju Tiwari and Sanjay Bidoliya abused him and appellant Arvind Singh assaulted him by means of knife. Sanjay also beaten him by a knife. Raju had beaten him by hockey on his head and other persons assaulted him by kicks and fists. Complainant lodged the report Ex.P/16 at police station Kotwali, Damoh. Injured Badri Singh was sent to the hospital for his treatment. Dr. A.K.Tiwari (PW2) examined him and found three incised wounds on his body. He referred him to surgical specialist. Dr. Smt. A. Chaudhary (PW10), RSO of Surgical Department, treated him and opined that injuries were grievous in nature.

5. After usual investigation, appellants were arrested. They have been prosecuted before the learned Chief Judicial Magistrate, Damoh. Learned Chief Judicial Magistrate, Damoh framed the charges under

Section 307/34 of the IPC.

6. Appellants abjured the guilt and pleaded that they have been falsely implicated in the case.

7. On appraisal of evidence on record though appellants have been acquitted to the charges under Section 307/34 of the IPC, however, convicted under Section 326 of the IPC and sentenced as mentioned hereinabove. Hence this appeal.

8. Learned counsel for the appellants submitted that the trial Court committed illegality in appreciating the evidence on record in its proper perspective. He further submitted that though injury was inflicted by a sharp weapon like 'knife' on the body of Badri Singh but no fracture was found on his body. He further submitted that Badri Singh was admitted in the hospital for treatment only for six days (i.e. from 4/5/93 to 10/5/93). In these circumstances, injuries caused to Badri Singh cannot be said to be grievous injuries, therefore, case of the appellants would fall under Section 324 of the IPC. He further submitted that since complainant and appellants have already entered into compromise, therefore, he prays for consideration of compromise and acquittal of the appellants.

9. On the other hand, learned Panel Lawyer for the State justified and supported the impugned judgment passed by the learned trial Court.

10. I have heard the learned counsel for the

parties and perused the impugned judgment, evidence and other material on record, specially statements of Badri Singh (PW12), Dr. A.K. Tiwari (PW2) and Dr.A. Chaudhary (PW10).

11. Dr. A.K. Tiwari (PW2) found three incised wounds on the person of Badri Singh caused by sharp weapon. Dr. Smt. A. Chaudhary (PW10) also found three incised wounds. She deposed that injuries were grievous in nature but in her cross-examination, she admitted that there is no fracture as well as there was no injury on the vital part of the body of Badri Singh. She also admitted that she is unable to explain that why she wrote the nature of aforesaid injury as grievous. She further stated that injured Badri Singh was admitted in the hospital on 4/5/93 and was discharged on 10/5/93.

12. Considering the aforesaid evidence on record, opinion of Dr. Smt. A. Chaudhary (PW10) cannot be said to be well founded. Since Badri Singh has admitted in the hospital only for six days, injuries caused by appellants to Badri Singh cannot be said to be grievous injuries and same were only simple injury. In these circumstances, trial Court committed illegality in not appreciating the evidence on record in its proper perspective. Since complainant and appellants have already entered into compromise and incident took place in the year 1993, at that time offence under Section 324 of IPC was compoundable. Thus, their compromise application is allowed.

13. In the result appeal is partly allowed.

Conviction recorded under Section 326 of the IPC by the trial Court is set aside instead appellants are liable to be convicted under Section 324 of IPC. Since compromise is allowed, therefore, they are acquitted to the charges under Section 324 of IPC on the basis of compromise.

14. Appellants are on bail. Their bail bonds and surety bonds shall stand discharged.

15. Fine amount deposited by the appellant, if any, be refunded to him.

(G.S. Solanki)  
JUDGE

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