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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE VINAY SARAF  
ON THE 29<sup>th</sup> OF DECEMBER, 2023  
CRIMINAL APPEAL No. 9900 of 2018**

**BETWEEN:-**

**BAIJU @ SHATRUGHAN PRASAD MISHRA S/O  
SHRAVAN KUMAR MISHRA, AGED ABOUT 27 YEARS,  
OCCUPATION: AGRICULTURIST R/O VILLAGE  
ATRAILA-11, POLICE STATION SOHAGI DIST. REWA  
(MADHYA PRADESH)**

**DEEPAK SAHU @ BADKU, S/O BRAJVASI SAHU, AGED  
ABOUT 25 YRS, OCCUPATION; LABOUR, R/O SATPURA  
PATEL BASTI (BHARAT NAGAR) P.S. SHANKARGARH,  
DIST. ALLAHABAD (U.P)**

**.....APPELLANTS**

**(BY MS. PAPIYA GHOSH - AMICUS CURIAE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH THROUGH  
POLICE STATION SOHAGI REWA (MADHYA  
PRADESH)**
- 2. DEEPAK SAHU @ BADKU S/O BRAJVASI SAHU,  
AGED ABOUT 25 YEARS, OCCUPATION: LABOUR  
SATPURA PATEL BASTI BHARAT NAGAR P.S  
SHANKARGARH (UTTAR PRADESH)**

**.....RESPONDENTS**

**(BY SHRI G.S. THAKUR - GOVERNMENT ADVOCATE )**

*This appeal coming on for hearing this day, the court passed the  
following:*

**JUDGMENT**

By the present appeal filed under Section 374(2) of the Code of Criminal Procedure, the appellants have challenged the judgment of conviction dated 06.12.2018 passed by Addl. Sessions Judge, Teonthar District - Rewa in S.T.

No.100154/2016 whereby the appellants have been convicted under Section 323/34 and under Section 324/34 of IPC and sentenced to undergo R.I. 6-6 months and fine of Rs.500-500/- in default 1-1 month R.I.

2. No one is present on behalf of appellants. Ms Papiya Ghosh-Advocate is present in the Court and has been requested to assist on behalf of appellants as amicus curiae.

3. The learned amicus curiae for the appellants has submitted that the prosecution failed to prove the case beyond reasonable doubt. During the trial, the appellant No.1-Baiju remained in custody from 09.07.2016 to 07.12.2016 and appellant No.2 Deepak Sahu remained in custody from 09.07.2016 to 29.09.2016. He prayed for acquittal of the appellants.

4. Per contra, the learned counsel appearing for the respondent/State supported the judgment and submitted that the prosecution has duly proved the incident and the learned trial Court has rightly convicted the appellants under Sections 324/34 & 323/34 of Indian Penal Code.

5. After considering the arguments of both the parties and after perusal of record, it appears that on 08.07.2016, a report was lodged by Rangdev Gupta against the appellants and two others which was registered as Crime No. 115/2016 at Police Station- Sohagi District- Rewa, under Sections 382, 458, 34 of Indian Penal Code. After investigation, the charge-sheet was filed. PW-2 (Rangdev Gupta), PW-3 ( Sonam Gupta) duly supported the prosecution case and narrated the incident and involvement of the appellants. PW-1 (Dr. Shyam Bihari) explained the injuries sustained by injured Rangdev Gupta, Pradeep Kumar Gupta and Sonam Gupta. However, accepted that the injuries were simple in nature. Learned Session Judge after considering the statements of the

witnesses and material available on record by judgment dated 06.12.2018 acquitted the co-accused Jaggu @ Yagyabhan Tiwari and Ramesh Kushwaha and also acquitted the appellants from the charges punishable under Sections 458, 394 of IPC however convicted under Section 323/34 and 324/34 of IPC and sentenced as stated hereinabove. The offences recorded by learned Session Judge based on due appreciation of evidence and do not require any interference. The judgment of conviction and conviction under Section 323/34 and under Section 324/34 of IPC are upheld.

6. However, looking to the facts that the incident took place in the year 2016, the prosecution has not brought any past criminal antecedents of the appellants on record, the appellants remained in custody for considerable time, there is no minimum sentence has been prescribed under Sections 323 and 324 of Indian Penal Code, I deem it proper to set aside the jail sentence of the appellants and accordingly, the jail sentences are set aside. However, fine amount Rs.500/- is maintained and shall be deposited (if not already paid) within a period of two months from today. The appellants are on bail, their personal bonds and bail bonds be discharged. Accordingly, the appeal is partly allowed.

7. Record of the trial Court be sent back along with copy of the judgment.

**(VINAY SARAF)**  
**JUDGE**

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