



2026:CGHC:3558

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 733 of 2005

Motu @ Jageshwar Prasad Aged About 30 years, s/o. Ganesh Ram Yadav, occupation Agriculture, resident of village Jharan, Police Station Lailunga, District Raigarh (CG).

...Appellant

versus

State of Chhattisgarh through Police Station Lailunga, District Raigarh, CG.

... Respondent(s)

For appellant.	:	Mr. Leekesh Kumar Advocate appears on behalf of Mrs. Renu Kochar, Advocate.
For Respondent(s)/State.	:	Ms. Prachi Singh, Panel Lawyer

(Hon'ble Mr. Justice Narendra Kumar Vyas)

Judgment on Board

21/01/2026

1. This criminal appeal filed under Section 374(2) of the Cr.PC is directed against the judgment of conviction and order of sentence dated 12-8-2005 passed by the Fourth Additional Sessions Judge, (Fast Track Court), Raigarh, (C.G.) in Sessions Trial No. 145 of 2004 whereby the learned Fourth Additional Sessions Judge has convicted the appellant for offence punishable under Section 326 of the Indian Penal Code (hereinafter called as 'IPC') and sentenced him to undergo Rigorous Imprisonment for three months and to pay fine of



Rs.5000/-, in default of payment of fine to further undergo RI for five months.

2. Case of the prosecution, in brief, is that the brother of Matuddut Tripathi namely Sonu Tripathi (PW/1) lodged a report in Police Station Lailunga, District- Raigarh stating therein that on the date of the incident i.e. on 13-6-2004 at about 12' O' clock in the night at Nawapara Police Station Lailunga, District Raigarh, accused/appellant with an intention to kill one Matudutt Tripathi, caused injury to the victim by knife as a result of which he sustained grievous injury on his stomach, therefore, offence under Section 307 of IPC was registered against the accused and charge-sheet has also been filed under section 307 of IPC.
3. After completion of investigation, the appellant was charge-sheeted in the Court of Judicial Magistrate First Class, Gharghoda as Criminal Case No. 640 of 2004 and learned JMFC committed the case to the Court of Sessions, Raigarh for trial from where the case has been transferred to Fourth Additional Sessions Judge which is registered as Session Trial No. 145/2004.
4. In order to bring home the above-stated offence, the prosecution examined as many as 12 witnesses namely Sonu Tripathi (PW/1), Mutudatt Tripathi (PW/2), G.P. Sahu (PW/3), Lal Kumar Choudhary (PW/4), Dineshwar Singh (PW/5) who is constable, Maheshwar Bhagat (PW/6), Radha Tripathi (PW/7), Mithilesh (PW/8), Pramod Kumar (PW/9), Dr. Lakshmi Burman (PW/10), Rajesh Ram (PW/11) and Dr. Anil Kumar Kushwaha (PW/12) and exhibited documents



namely map (Ex. P/1), FIR dated 13.06.2004 (Ex. P/2), application for medical examination (Ex. P/3), opinion (Ex. P/3A), crime detail form (Ex. P/4), property seizure memo (Ex. P/5), submission of charge-sheet memo (Ex. P/6), arrest surrender memo (Ex. P/7), receipt of forensic science lab (Ex. P/8), application for medical examination of the victim (Ex. P/9), application for examination of knife and its report (Ex. P/10 & P/10A), MLC (Ex. P/11) & prescription-medical history of victim (Ex. P/12). The appellant / accused abjured the guilt and entered into defence. The statement of the accused/appellant was recorded under Section 313 of the CrPC, in which he denied his guilt and has taken the stand that he has been falsely implicated in this case. However, the accused examined none of the witness in his defence.

5. The trial Court on the basis of evidence and material on record produced by the prosecution has convicted the appellant under Section 326 of IPC for three years with fine amount of Rs. 5000/- instead of conviction under Section 307 of IPC vide its judgment dated 12-8-2005. Being aggrieved with the conviction, the appellant prefers the instant appeal before this Court.
6. Learned counsel for the appellant would submit that the appellant is innocent and has been falsely implicated in crime in question. He would further submit that finding recorded by the learned trial Court suffers from perversity or illegality as the learned trial Court, has not considered the evidence in its proper perspective. He would further submit that initially the victim assaulted the accused and thereafter



the appellant assaulted the victim and the present is a case of single injury caused by the appellant on the abdomen of the injured which was not fatal to life. He would further submit that there are omissions and contradictions in the statements of the witnesses recorded under Section 161 of the Cr.P.C. He would further submit that the learned Court below ought to have considered that in FIR Sonu Tripathi (PW/1) has stated that the accused has assaulted his brother in his presence whereas in the statement recorded before the Court below he has stated that who has assaulted his brother and how he received the injury, he is not aware, therefore, the case of the prosecution is doubtful. Alternatively, he would submit that the incident took place way back 2004 and 21 years have already elapsed, the appellant has already remained in jail for 355 days and therefore, the sentence awarded by the trial Court may be reduced to the period already undergone by him and would pray for allowing the appeal.

7. On the other hand, learned Panel Lawyer appearing for the respondent/State supporting the impugned judgment would submit that the prosecution has proved its case beyond reasonable doubt that the appellant has caused grievous injury to the victim and the trial Court has rightly convicted and sentenced the appellant for offence punishable under Section 326 of the IPC and there is no infirmity in the same. He would further submit that the victim has clearly deposed before the trial Court how brutally the appellant has assaulted him by knife causing grievous injury, as such imposition of sentence is



proportionate to the offence committed by the appellant and would pray for dismissal of the appeal.

8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.
9. Mutuddat Tripathi (PW/2) victim has deposed before the learned trial Court that on the fateful date of the incident he and accused were in intoxication and on account of some hot talks between them, he had assaulted the accused with small stick and thereafter when he reached to the pool, accused assaulted him with knife causing injury on his stomach. Thereafter he was hospitalized and discharged which was remained unrebutted in the cross-examination.
10. PW/10 Dr. Lakshmi Burman who has examined the victim has categorically stated that the victim was brought to the hospital in injured condition and on examination he found the wound on the body of the injured in the size of 6 cm x 4 cm near stomach which is in grievous in nature and gave his report (Ex.P/10-A).
11. From perusal of the evidence and material on record, it is quite vivid that the learned trial Court after appreciating the evidence, material on record, particularly, the statement of Matudutt Tripathi (PW/2) and the opinion of Dr. Burman (PW/10) which remains rebutted during cross examination, has recorded its finding that the appellant/accused caused injury to the victim by knife and the injury sustained by the victim is grievous in nature. It is well settled position of law that the evidence of injured person must be given due weightage being a



stamp witness and his presence cannot be doubted. Hon'ble the Supreme Court in case of **State of Uttar Pradesh Vs. Naresh & others [(2011) 4 SCC 324]** in paragraph 27 has held as under:-

“27. The evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein. [Vide: Jarnail Singh v. State of Punjab, (2009) 9 SCC 719; Balraje @ Trimbak v. State of Maharashtra, (2010) 6 SCC 673; and Abdul Sayed v. State of Madhya Pradesh, (2010) 10 SCC 259].”

12. In these circumstances, the complicity of accused/appellant in crime in question stands proved beyond reasonable doubt, the nature of injury caused to the victim coupled with the medical evidence, it can safely be said that the accused/appellant had caused grievous injury to the victim/injured with dangerous weapon knife making him liable to be convicted under Section 326 of IPC. Thus, conviction of the appellant under Section 326 of the IPC is concerned, it cannot be said to suffer from perversity or illegality warranting interference by this Court. Accordingly, the conviction of the appellant for commission of offence under Section 326 of IPC is affirmed.



13. Alternate submission made by learned counsel for the appellant that there are mitigating factors available on record as the incident took place on 13-6-2004 and more than 21 years have lapsed, the appellant has already undergone the jail sentence of 355 days, after releasing on bail he never misused the liberty granted to him and except this case, he has no past criminal antecedents. The appellant is now must be 52-53 years and nearing to old age, he must be settled with the family, is being considered by this Court.
14. Before advertng to the submission advanced by counsel for the appellant, this Court has to ascertain what may be mitigating factors to apply the principle of sentence already undergone. The mitigating factors are always subject to examination by Hon'ble the Supreme Court and various High Courts. Hon'ble the Supreme Court in case of **State of M.P. Vs. Najab Khan [(2013) 9 SCC 509]** has held in paragraph 16 as under:-

“16. In view of the above, we reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”



15. Hon'ble the Supreme Court in case of **Raj Bala Vs. State of Haryana**

& others [(2016) 1 SCC 463] has held in paragraph 16 as under:

“16 A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the “finest part of fortitude” is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.”

16. Again Hon'ble the Supreme Court in case of **Kokaiyabai Yadav vs**

State of Chhattisgarh [(2017) 13 SCC 449] has held in paragraph 6

as under:-

“6. If the object of our justice system is to reform the criminal, the appellant's exemplary conduct has aptly fit the bracket. Punishment can be used as a method of reducing the incidence of criminal behaviour either by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. Reforming criminals who understand their wrongdoing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world have the capacity of humanising this world. The crime was a result of a conflict between the motive of the mother



and her character, with the motive triumphing. However, the 13 years she has spent in the prison, she has built her character moulding it by educating herself and learning the ways of life. The reformed appellant will be able to add value to the life of her now 15-year old son, by taking what she has learnt in these past few years and living by it.”

17. In light of the law laid down by Hon’ble the Supreme Court and the facts of the case, it is quite vivid that the assault was made in intoxication condition and appellant remained in jail during trial for 355 days as also been imposed fine amount of Rs. 5000/- and now the accused must have been aged about 52-53 years as at the time of trial, he was 30 years old. The prosecution has also not placed any material on record indicating the criminal antecedents of appellant, he has been regularly attending the trial Court after releasing by this Court on bail and has not misused the liberty granted to him while granting bail by this Court, I am of the view that there is sufficient mitigating factors are available on record to reduce the sentence already undergone.
18. Accordingly, affirming the conviction under Section 326 of IPC, the sentence is reduced to the period already gone by the appellant by enhancing the fine amount from Rs. 5000/- to Rs. 15,000/-. The difference amount of fine i.e. Rs. 10,000/- (Rs. Ten Thousand only) shall be deposited by the appellant 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 victim as per Section 357 (3) of the Cr.P.C. as compensation within further one month from the date of deposit by the appellant.



19. Consequently, the instant appeal is partly allowed to the extend indicated herein-above.
20. From the records, it appears that the appellant is on bail and his bail bonds shall continue for a further period of six months from today in view of Section 437-A of the Code of Criminal Procedure, 1973.
21. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

(Narendra Kumar Vyas)

Judge

Raju