

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE JUSTICE SHRI ANAND PATHAK &
HON'BLE SHRI JUSTICE SHRI HIRDESH**

ON THE 31st OF JULY, 2025

CRIMINAL APPEAL NO. 116 OF 2025

**SARNAM SINGH BAGHEL AND OTHERS
VS.
THE STATE OF MADHYA PRADESH**

Appearance:

Shri Arun Kumar Pateriya along with Shri Abhishek Tiwari and Ms. Priyanka Chauhan- learned Counsel for appellants.

Dr. Anjali Gyanani- learned Public Prosecutor for respondent- State.

Shri Pramod Kumar Pachauri with Shri Rajkumar Rathore- learned Counsel for complainant.

JUDGMENT

Per Justice Hirdesh:

This criminal appeal under Section 415(2) of Bhartiya Nagrik Suraksha Sanhita, 2023 (in short " BNSS") has been preferred by appellants challenging the judgment of conviction and order of sentence dated 18th of December, 2024 passed by First Additional Sessions Judge, Seondha, District Datia in Sessions Trial No. 42 of 2020, whereby appellants have been convicted and sentenced under Section 323 read with Section 34 of IPC and sentenced to undergo for six months' RI with fine of Rs.500/-; in default of payment of fine amount, further undergo for one month's RI (**for causing injuries to injured Havaldar**) and under Section 302 read with Section 34 of IPC, sentenced to undergo for Life Imprisonment with fine of Rs.2,000/-, in default of payment of fine amount, further undergo for one year's RI [**for causing death of**

Maya @ Mayawati @ Mayadevi Baghel respectively. Both the sentences have been directed to run concurrently.

(2) Briefly stated facts of prosecution case are that, on 02-01-2020, complainant Havaldar Singh Baghel (PW-1) along with his mother-injured Maya Bhagel, father Harisingh and cousin Virendra lodged a written report at Police Station Seondha, District Datia to the effect that on 02-01-2020 around 07:00 in the evening, he had gone to the shop of Mulu Baghel to buy *gutka* where he met accused Karu Baghel. Karu Baghel started abusing him. When he refused, Karu Baghel started beating him. Then, accused Mahesh Baghel and Sarnam Baghel also came there and also started beating him with kicks and fists. On hearing noise, his mother Maya Baghel came there to save him. Then, Mahesh Baghel inflicted *lathi* blow on the head of his mother due to which, she got a head injury. Thereafter, Virendra (PW-2) and his father Harisingh (PW-3) came, who saved him and his mother. All the accused fled away by giving a threat that today they have been saved, next time they will kill him. On the basis of such allegations, FIR *vide* Ex.P1 was registered at Crime No. 04 of 2020 for offence punishable under Sections 294, 323, 506 read with Section 34 of IPC. Matter was investigated. During investigation, spot map was prepared *vide* Dx.P5. Statements of complainant Havaldar and witnesses Harisingh Bahgel, Virendra Baghel, Arvind Baghel and independent witnesses Sarju Prasad Baghel and Mulayam Baghel were recorded. Injured-complainant Havaldar and Mayadevi were medico-legally examined *vide* MLC reports Ex.P7 to Ex.P8. During treatment of Mayadevi, it was found that Mayadevi had suffered a fatal injury, therefore, offence under Section 307 of IPC was enhanced. After death of Mayadevi on 04-02-2020, offence under Section 302 of IPC was enhanced. Postmortem of deceased Mayadevi was conducted *vide* Ex.P9. Accused Karu *alias* Mahendra, Mahesh and Sarnam were arrested *vide* arrest memo Ex.P20 to Ex.P22. Memorandum

of accused Mahesh was recorded *vide* Ex.P-23 from whose possession a bamboo stick was seized *vide* seizure memo Ex.P-24 and the same was sent to Regional Forensic Science Laboratory, Gwalior *vide* memorandum Ex.P-25 of Superintendent of Police, Datia. The chemical test report of said seized bamboo stick was received *vide* Ex.P-26. After completion of investigation, charge-sheet was filed *vide* Ex.P28 before the competent Court of Criminal jurisdiction against all the accused for offence punishable under Sections 323, 294, 506, 34, 302, 307 of IPC, from where the case was committed to the Sessions Court for its trial.

(3) Charges under Sections 294, 323/34, 302/34, 506 Part II of IPC were framed and read them out to appellants-accused. Appellants-accused denied the charges and requested for trial. During trial, statements of accused under Section 313 of CrPC were recorded in which, they pleaded that they have been falsely implicated and they are innocent. No witness was examined on their behalf in their defence. Prosecution in order to prove its case, examined as many as fourteen witnesses.

(4) Learned Trial Court, on appreciation of the evidence and arguments adduced by the parties, pronounced the impugned judgment and finally convicted and sentenced the appellants for commission of offences under the provisions of Sections 323/34 and 302/34 of IPC, as stated in Para 2 of this judgment.

(5) It is submitted by learned Counsel for the appellants that learned Trial Court has wrongly convicted and sentenced the appellants without properly evaluating the evidence available on record. There are so many contradictions and omissions in the significant portion of the statements of prosecution witnesses. Appellant Karu *alias* Mahendra was empty handed and did not have any weapon at the time of incident. A quarrel took place between complainant- Havaldar and appellant Karu *alias* Mahendra Baghel. Karu

Baghel started kicks and fists blow to Havaldar. Thereafter, appellant Mahesh Baghel and appellant Sarnam Baghel also came there and gave kicks and fists to complainant Havaldar. In between, deceased Mayadevi, on hearing hue and cry, suddenly came on the spot where appellant Mahesh Baghel picked a bamboo stick lying nearby and hit Mayadevi on her head. There is no allegation of committing *marpeet* with Mayadevi either by Karu *alias* Mahendra Baghel or Sarnam Baghel. There is nothing on record that the deceased died due to injury caused by appellant Karu *alias* Mahendra Baghel and Sarnam Baghel and there is no common intention of them for causing any injury to deceased, therefore, no offence under Section 302 read with Section 34 of IPC is made out against them.

(6) It is further contended that the FIR was lodged immediately after the incident on the basis of information of complainant Havaldar. Harisingh, the husband of Mayadevi took away her from Hospital on 17-01-2020 and soon after her discharge, deceased Mayadevi was started living a normal life at her home. Her husband did not make any proper treatment due to which, deceased Mayadevi died on 04-02-2020 i.e. after one month and two days of the alleged incident because of rash and negligence on his part.

(7) It is further contended that the alleged offence committed by appellant Mahesh Baghel was without any specific intention or knowledge, therefore, no offence is made out against him under Section 302 with the aid of Section 34 of IPC. If the prosecution case is accepted in its face value, then the same shall not be travelled beyond the provisions of Section 325 of IPC, therefore, at the most, the offence falls within the scope of Section 325 of IPC. The trial Court has committed an error in convicting and sentencing him under Section 302 with the aid of Section 34 of IPC.

(8) It is further contended that the prosecution witnesses are family members and interested witnesses and due to some political rivalry, they have

falsely implicated the appellants. The appellants were on bail during trial and they did not misuse the liberty so granted to them. Under these circumstances, it is prayed that the impugned judgment deserves to be set aside.

(9) On the other hand, learned Counsel for the State ably assisted by learned Counsel for complainant vehemently opposed the prayer of appellants. Inviting attention of this Court towards the conclusive paragraphs of the impugned judgment, it is submitted that deceased Mayadevi died due to head injury sustained by her, which is a vital part of the body. The prosecution witnesses remained intact in their cross-examination and supported the prosecution version. Prosecution has rightly established the appellants guilty of alleged offence after appreciating the prosecution evidence and other material available on record. There being no infirmity in the impugned judgment and the findings arrived at by the Trial Court and do not require any interference by this Court. Hence, prayed for dismissal of this appeal.

(10) Heard rival contentions and perused the record.

(11) Before advertting into the merits of case, this Court thinks it apposite to go through the evidence of following material witnesses.

(12) Complainant Havaldar (PW-1) in his examination-in-chief deposed that on the date of incident i.e. 02-01-2020 around 07:00 in the evening, he had gone to the shop of Mulu Baghel for purchase of *Gutka*, where all accused met there and committed *marpeet* with him by kicks and fists. On his screaming, his mother- Mayadevi came there to save him. Then, accused Mahesh Baghel inflicted his mother Mayadevi with a stick from behind and Lalu Baghel also inflicted his mother on her back with a stick.

(13) Virendra Singh Baghel, nephew of deceased Mayadevi (PW-2) in his examination-in-chief deposed that when Mayadevi came to the spot, accused Mahesh Baghel inflicted a stick blow on her head and accused Lalu also hit

on the back of Mayadevi with a stick.

(14) Husband of deceased Harisingh (PW-3) in his evidence deposed that accused Mahesh Baghel inflicted a stick blow on the head of his wife and Lalu also hit her on back with a stick.

(15) Arvind Baghel (PW-4), nephew of deceased Mayadevi, in Para 2 of his evidence deposed that on the date of alleged incident, Havaldar came running and informed that accused Mahesh Baghel, Karu Baghel, Sarnam Baghel and Lalu Baghel had beaten him up and abused him at the shop and when Mayadevi came there, Mahesh Baghel inflicted her a stick blow on the head as a result, she fell down and thereafter, Lalu hit her with a stick. Thereafter, he, Virendra and Harisingh reached the spot.

(16) All the above witnesses in their evidence deposed that accused Mahesh Baghel had inflicted *lathi* blow on the head of the deceased Mayadevi and accused Karu also inflicted *lathi* blow on her back, but the author of FIR-complainant- Havaldar (PW-1) in the contents of FIR has only mentioned that only accused Mahesh Baghel had inflicted *lathi* blow on the head of his mother Mayadevi when his mother reached the spot. Similarly, the Investigating Officer- ASI, Sabhapati Singh Bhadoriya (PW-10), who was posted at PS Seondha in his cross-examination specifically deposed that the Constable did not tell him that accused Lalu had hit Mayadevi with a stick and further in Para 04 of his cross-examination, he deposed that Virendra, Harisingh and Arvind also did not tell him that Lalu had beaten Mayadevi. Thus, it is not clear from the evidence to show as to whether Lalu *alias* Mahendra had struck any *lathi* blow to the deceased. Complainant Havaldar (PW-1) in Para 2 of his evidence deposed that his mother Mayadevi was treated in the hospital and doctor discharged her from the hospital saying that now her mother is fine and keep feeding her at home. Virendra Baghel (PW-2) in Para 2 of his examination-in-chief deposed that treatment of his aunt

Mayadevi was continued in the hospital for 15-20 days, after which, she was discharged and came home and in Para 07 of his cross-examination further deposed that after discharge of his aunt Mayadevi, she was not treated by any doctor at home. The doctor had given some medicines after discharge and since then, they did not take his aunt Mayadevi to any hospital for any further treatment.

(17) So far as the contention of appellants that the prosecution witnesses are family members and interested witnesses and due to some political rivalry, they have falsely implicated them, therefore, their evidence is not reliable is concerned, it is well-settled principle of law that a witness, who is a relative of deceased or victim of a crime cannot be characterized as "interested witness". Close relationship of witness or victim is no ground to reject his evidence. There is nothing reveals from the above witnesses to falsely implicate the accused and their evidence substantially unrebutted in their cross-examination, therefore, their evidence could not be discarded merely because they are the relative witnesses of deceased. Therefore, the argument of appellants on this point has no substance.

(18) Dr. Navin Nagar (PW-7) in his evidence deposed that on 02-01-2020, he was posted as Medical Officer in Civil Hospital, Seondha and on medico-legal examination of Mayadevi, he found one lacerated wound size 2x0.5 cm on the back of her head for which, he had advised an X-ray and the injury sustained by Mayadevi appears to have been caused by hard and blunt object within three hours of examination, for which, he advised for X-ray to know the nature of injury. Dr. Nagar further deposed that injured/complainant Havaldar (PW-1) did not have any injuries. Dr. Narendra Sharma (PW-8), who had conducted postmortem of deceased Mayadevi, opined that the cause of death of deceased was sudden cardiac respiratory arrest, which appeared to be due to head injury. The injury could have occurred within a period of 10

days to one month and the wound had healed. This witness in Para 02 of his cross-examination admitted that death of the deceased did not happen due to cardiac arrest and respiratory failure because of head injury, but due to lack of proper treatment and oxygen.

(19) Now, coming to the next limb of argument, learned counsel for the appellants vehemently contended that this is a case of single *lathi* blow, therefore, it cannot be assumed against appellant- Mahesh Baghel that he has caused injury to deceased Mayadevi with intention to kill her. Had he had such type of intention, he would have caused repeated blows upon the deceased.

(20) The main question for determination of this appeal is whether there was any intention of appellant Mahesh Baghel to assault deceased Mayadevi *lathi* blow which resulted into her death for which, appellant Mahesh Baghel would be convicted under Section 302 with the aid of Section 34 of IPC or not?

(21) In order to give an answer to the above question, it is necessary to examine, first of all, the scope of Section 34 of IPC.

(22) Section 34 of IPC defines that when a criminal act is done by several persons, in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. To attract the application of Section 34 of IPC, there are three ingredients viz. a criminal act must be done by several persons; there must be a common intention of all to commit that criminal act and there must be participation of all in commission of offence in furtherance of that common intention. The "common intention" implies prior concert, that is, a prior meeting of minds and participation of all members of group in execution of plan. To constitute common intention, it is necessary that intention of each accused be known to all the others and be shared by them. If an accused committed murder with the

intention to cause death, it would generally fall under Section 302 read with Section 34 of IPC if multiple individuals shared a common intention to commit the crime.

(23) The Hon'ble Apex Court in the case of ***Mohd. Ishaq Mohammad vs. State of Maharashtra [1979 Law Suit (SC) 212]*** has held as under-

"We have heard learned Counsel for the parties and have gone through the judgment of the High Court and of the Sessions Judge. The occurrence in the course of which the deceased was assaulted, took place suddenly and after hot exchange of abuses, which took place between the deceased and the appellants. The appellants are said to have assaulted the deceased with sticks. There is no evidence to show as to which of the appellants struck the fatal blow on the deceased. Having regard therefore to the circumstances of the present case and the nature of injuries sustained by the appellants, we are unable to agree with the High Court that the case falls under Section 302. There is no evidence of any intention on the part of the appellant either to cause death of the deceased or cause such injuries of which the appellant could have the knowledge that it was likely to cause death although it cannot be doubted that the appellant had the common intention to cause grievous hurt to the deceased by lathis. Thus the offence falls under Section 325/34 and not under Section 302 or 304(1). It appears that the appellants have already served their sentences or at any rate a substantial part of it. For these reasons, therefore, we would allow this appeal to this extent that the conviction of the appellants are altered from that under Section 302/34 to one under Section 325/34 and the sentences are reduced to five years in each case.".

(24) Further, the Hon'ble Apex Court in the case of ***Ratan Singh, Ran Singh & Anr. vs. State of Punjab [1988 Law Suit (SC) 214]*** has observed as under:-

"2. Admittedly according to the prosecution's own case Ran Singh and Rattan Singh were carrying lathis which could be described as hard and blunt object. Such injuries on the person of the deceased were either on hands or on feet and at best what could be attributed to them could be injuries resulting in fractures. None of these two appellants could be convicted for causing injuries individually which could make out an offence under Section 302. At best they could only be convicted under Section 325 of IPC only."

(25) In the case of ***Mahendra Singh vs. State of Delhi Administration [AIR 1986 SC 309]***, it is held that grievous hurt caused by blunt weapon like lathi, can fall within section 325 of IPC and not under Section 326 of IPC. Likewise, in another case, ***Halke vs. State of M.P. [AIR 1994 SC 951]***, wherein it is held that the accused caused death of deceased by inflicting blows on him with stick. Head injury proved to be fatal and deceased died after a week. In this case, the accused was held liable and punished under

Section 325 of IPC. The following excerpts of the aforesaid judgment is worth to refer here:-

"9.....No doubt the injury on the head proved to be fatal after lapse of one week but from that alone it cannot be said that the offence committed by the two appellants was one punishable under Section 304 Part II IPC. The injuries found on the witnesses are also of the same nature and for the same they are convicted under Section 325 of IPC."

(26) Having gone through the evidence available on record and considering the above law laid down in the above-cited cases, it was found that appellant Karu *alias* Mahendra was empty handed and did not have any weapon at the time of alleged incident. A quarrel took place between complainant- Havaldar (PW-1) and appellant Karu *alias* Mahendra Baghel. Appellant Karu Baghel gave kicks and fists blow to complainant/injured Havaldar. Thereafter, appellant Mahesh Baghel and appellant Sarnam Baghel also came there and give kicks and fists to complainant Havaldar. In between, deceased Mayadevi, on hearing hue and cry, suddenly came on the spot where appellant Mahesh Baghel picked a bamboo stick lying nearby and inflicted the same on the head of deceased Mayadevi. There is no evidence of any intention on the part of appellant Mahesh Baghel for which, he could have the knowledge that it was likely to cause death although it cannot be doubted that he had the common intention to cause grievous hurt to deceased by means of stick. Further, from memorandum of accused Mahesh Baghel *vide* Ex.P-23, it is clear that from his possession a bamboo stick was seized *vide* seizure memo Ex.P-24.

(27) Further, from the material available on record, it appears that Harisingh, husband of Mayadevi took away Mayadevi from Hospital on 17-01-2020 and soon after her discharge, Mayadevi was started living in her family, therefore, it is established that deceased was conscious and she expired on 04-02-2020.

(28) Dr. Narendra Sharma (PW-8) in Para 02 of his cross-examination deposed that death of deceased did not happen due to cardiac arrest and respiratory failure because of head injury, but due to lack of proper treatment

and oxygen. The medical evidence also does not bring out that the injury which was caused, was fatal injury in the ordinary course of nature to cause death of deceased. Admittedly, a single *lathi* blow on the head was sustained by the deceased, hence, in the considered opinion of this Court, appellant Mahesh Baghel can only be attributed for committing the offence punishable under Section 325 of IPC instead of Section 302 with the aid of Section 34 of IPC.

(29) So far as conviction of appellants Sarnam Singh Baghel and Karu *alias* Mahendra Baghel under Section 302 with the aid of Section 34 of IPC is concerned, from the evidence available on record, there is no allegation of committing *marpeet* with deceased Mayadevi either by accused Karu *alias* Mahendra Baghel or Sarnam Baghel. There is also nothing on record to show that the deceased died due to injury caused by them. They did not share a common intention to commit murder of the deceased. The description of incident that when deceased came to the scene of occurrence, only appellant Mahesh Baghel had inflicted a *lathi* blow on the head of deceased and there is no common intention of appellants-accused Karu *alias* Mahendra Bahgel and Sarnam Baghel for causing any injury to the deceased, therefore, no offence under Section 302 read with Section 34 of IPC is made out against them. Accordingly, they are acquitted of charges under Section 302 read with Section 34 of IPC.

(30) So far as conviction of all the appellants under Section 323 read with 34 of IPC regarding causing of injury to Havaldar (PW-1) is concerned, as per medical evidence available on record, injury sustained by Havaldar is simple in nature caused by hard and blunt object. The circumstances under which Havaldar was beaten, nature of injuries and the manner in which, the wounds were received by him, clearly established that all the appellants are liable to be prosecuted under Section 323 read with Section 34 of IPC. Learned Trial

Court has rightly convicted and sentenced all the appellants for commission of offence under Section 323 read with 34 of IPC. Therefore, sentence of appellant Nos 1 and 2 shall be reduced to the period as already undergone by them. Their bail bonds/surety stand discharged.

(31) In view of foregoing discussions, we, therefore, allow this **appeal in part** to this extent that conviction of appellant Mahesh Baghel is altered from that of Section 302 read with Section 34 of IPC to one under Section 325 of IPC and his sentence is reduced from Life Imprisonment to **Four Years' rigorous imprisonment with fine of Rs.50,000/-** and in default of payment of fine, he shall further undergo One Year's additional rigorous imprisonment and deposited fine shall be adjusted. Appellant Mahesh Baghel is on bail. His bail bond and surety bond stand cancelled. He is directed to surrender before the trial Court to serve out the remaining part of jail sentence. For other appellants, appeal is allowed to the extent indicated in Para 30.

(32) To the extent indicated above, the instant **appeal stands allowed in part** and disposed of.

(33) A copy of this judgment along with record be sent to the Trial Court as well as to Jail Authorities for information and compliance.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE