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IN THE COURT OF THE SESSIONS JUDGE, AMBEDKAR NAGAR

Presiding Officer: Chandroday Kumar, H.J.S. (UP06553)

Sessions Trial No.: 63 of 2017

(Arising out of Case Crime No. 204 of 2015, P.S. Kotwali Tanda)

State of Uttar Pradesh -----Prosecution

versus

1. **Rambali**, Son of Mahadev (*Proceedings abated due to death during trial*)
2. **Dilip**
3. **Santram**
4. **Sanjay**

All sons of Rambali, Residents of Mohalla Kashmeeriya Tanda, P.S. Kotwali Tanda, District Ambedkar Nagar. -----Accused Persons

Appearance:

- For the State: Sri Govind Srivastav, Learned District Government Counsel (Criminal)
- For the Accused: Sri Mhd. Junaid, Learned Defence Advocate

JUDGMENT

1. The accused persons, namely Dilip, Santram, and Sanjay Kumar, are facing trial before this Court for offences punishable under Sections 323, 325, 308, and 504 read with Section 34 of the Indian Penal Code (IPC). The initial charge sheet was submitted by the police of P.S. Kotwali Tanda, District Ambedkar Nagar.

PROSECUTION NARRATIVE AND BACKGROUND

2. As per the prosecution's story, the wheels of justice were set in motion by a written report submitted by the Informant, Ram Pyare (PW-1), on September 30, 2015, at approximately 21:35 hours at Police Station Kotwali Tanda.
3. The substance of the written report states that on the same day, i.e., September 30, 2015, at around 7:00 PM, the Informant's son, Shri Ram (PW-3), and his granddaughter, Reeta Devi, went to the house of the accused persons to object (*ulahna*) to the accused Rambali's cow consuming their cattle fodder. Enraged by this objection, the accused persons – Rambali (now deceased), Dilip, Santram, and Sanjay – acting in concert with a common intention, armed themselves with *lathis* and *dandas*. They hurled filthy abuses at Shri Ram and Reeta Devi and brutally assaulted them.
4. Shri Ram sustained severe injuries and collapsed on the spot. He was rushed to the Community Health Centre (CHC), Tanda, via a 108 ambulance, while the Informant escorted Reeta Devi to the police station after her preliminary medical examination.

PROCEDURAL HISTORY & INVESTIGATION

5. **Registration of NCR:** Based on the written report, Head Moharrir Vinay Kumar Mishra (PW-7) initially registered a Non-Cognizable Report (NCR) No. 47/2015 under Sections 323 and 504 IPC against the four named accused persons. Entry was duly recorded in the General Diary (GD) vide Rapat No. 36 at 21:35 hours on September 30, 2015.
6. **Order for Investigation:** The Informant moved an application under Section 155(2) of the Code of Criminal Procedure (CrPC) before the Court of the Chief Judicial Magistrate (CJM), Ambedkar Nagar, seeking an investigation into the matter. Upon the court's order dated October 19, 2015, the investigation was entrusted to Sub-Inspector Santosh Kumar Shukla (PW-4).
7. **Alteration of Sections:** During the investigation, the Investigating Officer (IO) inspected the spot, prepared the site plan (**Ex. Ka-2**), and recorded the statements of witnesses. Based on the medical opinions, the discharge summary, and the CT Scan/X-ray reports revealing a bone fracture, the offences were altered to include Sections 325 and 308 IPC.
8. **Charge Sheet and Committal:** Upon completion of the investigation, a charge sheet (**Ex. Ka-3**) under Sections 323, 325, 308, and 504 IPC was submitted against all the accused. The learned Judicial Magistrate took cognisance on May 18, 2016, complied with the provisions of Section 207 CrPC, and

subsequently committed the case to the Court of Sessions vide order dated February 21, 2017, as Section 308 IPC is exclusively triable by a Court of Sessions.

FRAMING OF CHARGES AND DEFENCE PLEA

9. Charges were formally framed against the accused persons under Sections 323/34, 325/34, 308/34, and 504 IPC. The accused persons pleaded not guilty and claimed a trial.
10. **Note on Abatement:** During the pendency of the trial, the principal accused, Rambali, expired. Consequently, proceedings against him were ordered to be abated vide court order, and the trial proceeded strictly against the surviving accused persons: Dilip, Santram, and Sanjay.
11. In their statements recorded under Section 313 CrPC, the accused persons denied the entire prosecution case, labelling the evidence as false and the investigation as manipulated. They raised a specific defence that the injured, Shri Ram, had sustained injuries in a **road traffic accident** on the Tanda main road and that they were falsely implicated due to neighbourhood animosity.

POINTS FOR DETERMINATION

12. To adjudicate this matter, the following essential points are framed for determination:
 1. Whether the accused persons, in furtherance of a common intention, voluntarily caused grievous hurt to Shri Ram by fracturing his frontal bone, thereby committing an offence under Section 325 read with Section 34 IPC?
 2. Whether the assault was committed with such intention or knowledge, and under such circumstances, that if death had been caused, the accused would have been guilty of culpable homicide not amounting to murder, thereby attracting Section 308/34 IPC?
 3. Whether the accused persons voluntarily caused simple hurt to Reeta Devi and Shri Ram, and intentionally insulted them to provoke a breach of peace, under Sections 323/34 and 504 IPC?

APPRECIATION OF EVIDENCE

13. To establish its case, the prosecution examined seven witnesses and produced key documentary evidence:

Witness Designation	Name of the Witness	Role / Type of Evidence
PW-1	Ram Pyare	Informant / Eyewitness
PW-2	Ram Awadh	Eyewitness
PW-3	Shri Ram	Injured Eyewitness
PW-4	SI Santosh Kumar Shukla	Investigating Officer (IO)
PW-5	Dr. Surjit Singh	Medical Officer, District Hospital
PW-6	Dr U.C. Tiwari (Retd.)	Senior Radiologist (Conducted CT Scan)
PW-7	HC Vinay Kumar Mishra	Clerk / GD Recorder

Testimony of PW-1 (Ram Pyare - Informant) in Examination-in-Chief

14. Prosecution Witness No. 1, Ram Pyare, the Informant of the case, deposed on oath during his examination-in-chief on September 13, 2017, as follows:

15. "The incident took place on September 30, 2015, at around 7:00 PM. On the day and time of the incident, my son Shri Ram went to the house of the accused Rambali to lodge a complaint (*ulahna*) regarding their cow consuming our cattle fodder. On this issue, the accused persons Rambali, Dilip, Santram, and Sanjay, all armed with *lathis* and sticks (*dandas*) in their hands, started abusing and brutally beating my son Shri Ram.

16. When my granddaughter Reeta also reached the spot, the accused persons assaulted her as well. Upon hearing the hue and cry, I, along with Ram Awadh, Jagannath, Ram Ujagir, and several other villagers, reached the spot and intervened to rescue them, after which the accused persons fled.

17. Due to the beating by the accused persons, a bone above my son Shri Ram's eye/eyebrow was fractured, which was bleeding heavily, and he fell to the ground unconscious on the spot. A 108 Ambulance was called over the phone. My son Shri Ram was then

taken to CHC Tanda in the ambulance for a medical examination. From there, he was referred to the District Hospital, Ambedkar Nagar. From the District Hospital, Ambedkar Nagar, he was taken to District Faizabad. His treatment and X-ray were conducted at the District Hospital, Faizabad.

18. In Faizabad, I asked the doctor whether my son would recover, to which the doctor replied that he would recover but it would take time. I got the written complaint (*tahrir*) of the incident drafted by an acquaintance and submitted it at Tanda Police Station, affixing my thumb impression on it. On that basis, my report was registered as an NCR (Non-Cognizable Report). For obtaining an investigation order in this regard, I got an application prepared through an acquainted advocate and submitted it after affixing my thumb impression, which is enclosed in the case file as Paper No. 5A/10 to 5A/11. It bears my thumb impression and has been marked as Exhibit Ka-1. I showed the place of occurrence to the Daroga ji (Investigating Officer), and he recorded my statement."
19. **Cross-Examination of PW-1 (Ram Pyare)**- On being cross-examined by the defence, PW-1 Ram Pyare stated on oath:
20. "The accused persons are my neighbours. Prior to the incident, I had no enmity with them. I am engaged in farming. I had mentioned in my written complaint that Reeta's medical examination had already been conducted. I had also specified the names of Ram Awadh, Jagannath, and Ram Ujagiren as witnesses in my complaint. If the names of the witnesses are not written in my complaint, I cannot state the reason for it. If the names of the witnesses are not mentioned in Exhibit Ka-1, I cannot state the reason for the same.
21. I did not sustain any injuries during the incident. It is not that I did not go to save my son on the spot; despite that, I did not sustain injuries. The police station is about one and a half to two kilometres away from my house. The altercation lasted for about half an hour. My son Shri Ram sustained multiple injuries all over his body. Blood was oozing from the forehead injury. Immediately after the injuries were inflicted, he was taken to the hospital by ambulance. He was first taken to Tanda Hospital, and after being referred from there, he was taken to the District Hospital. From the District Hospital, he was referred to Faizabad. I was constantly present with my son, arranging for his medicines and treatment. I returned from Faizabad after seven to eight days.
22. The Daroga ji did not interrogate us initially. He questioned us later when an application was moved in the court. I had disclosed to the Daroga ji in my statement that my son Shri Ram had gone

to the accused persons' residence to lodge a complaint (*ulahna*). I had also explicitly stated the fact regarding the complaint (*ulahna*) in the application submitted to the court. If the point regarding the *ulahna* is not recorded in my statement and application, I cannot state the reason for it.

23. My house is situated on the northern side of the place of occurrence. Munna's house is on the southern side. My house is on the eastern side, and the house of the accused persons is on the western side. Due to the injuries, my son's clothes were heavily stained with blood. He had also fallen on the ground. The Daroga ji had taken away the blood-stained clothes and blood-stained soil and completed the paperwork. [*Witness again states*] The Daroga ji did not take away the clothes; he only inspected them. When I reached, my son was lying on the ground and was unconscious. I went and picked him up. After being injured, my son fell on the side pavement of the road. This metalled road leads to Tanda. There was no prior dispute with the accused persons.

24. It is wrong to suggest that I did not witness any incident with my own eyes. It is also wrong to suggest that my son sustained injuries in a road accident on the highway and therefore, no medical examination was conducted, and only an X-ray was done. It is also wrong to suggest that no such incident occurred as deposed by me. A false case has been registered due to neighbourly animosity."

25. **Testimony of PW-2 (Ram Awadh) in Examination-in-Chief-** Prosecution Witness No. 2, Ram Awadh, deposed during his examination-in-chief on December 19, 2017, as follows:

26. "The incident took place on September 30, 2015, at around 7:00 PM. I was present at the place of occurrence at the time of the incident. On the specified day and time, Shri Ram, the son of the Informant Ram Pyare, had gone to the house of the accused Rambali to complain about their cow eating their fodder. Over this matter, Rambali and his family members became infuriated and started beating him with *lathis* and sticks.

27. The accused persons Rambali, Dilip, Santram, and Sanjay, all armed with *lathis* and sticks, hurled filthy abuses at Shri Ram, Ram Pyare, and Reeta, and beat them up. Shri Ram sustained severe injuries. He was hit on the forehead above the right eyebrow, which was torn and bleeding. Shri Ram fell unconscious on the spot. Upon hearing the hue and cry, I, Jagannath, Ram Ujagiren, and several other villagers reached the spot and intervened to resolve the fight. The injured Shri Ram was taken to the hospital

in an unconscious state by ambulance. The Daroga ji had recorded my statement regarding the incident."

28. Cross-Examination of PW-2 (Ram Awadh)- On being cross-examined by the defence, PW-2 Ram Awadh stated on oath:

29."The Informant Ram Pyare belongs to my clan. Prior to the incident, there was no enmity between the Informant and the accused persons. My house is located about one *bigha* (100 meters) away on the eastern side of Ram Pyare's house. Regarding the spot where the fight took place, Rambali's house is to the north, the Informant's house is to the south, an open field is to the west, and an agricultural field is to the east.

30.When I reached the spot, Shri Ram was already lying injured and unconscious. A lot of people were present when I arrived, numbering around fifty. Due to the darkness, I cannot specify the names of the people present there. I remained at the spot for about an hour. After the arrival of the ambulance, I returned to my house. I did not accompany the ambulance. I neither went to the hospital nor to the police station in connection with this incident.

31.The Daroga ji had questioned me about the incident. I told the Daroga ji that when I reached the spot, Shri Ram was lying unconscious. If this fact has not been recorded by the Daroga ji in my statement, I cannot state the reason for it. It is wrong to suggest that I did not witness any incident and am deposing falsely merely due to belonging to the Informant's clan. It is also wrong to suggest that no such incident took place as narrated in my statement."

32. Testimony of PW-3 (Shri Ram - Injured) in Examination-in-Chief- Prosecution Witness No. 3, Shri Ram, deposed during his examination-in-chief on January 24, 2018, as follows:

33."The incident occurred on September 30, 2015, at around 7:00 PM. Rambali's cow was eating the fodder meant for my cattle. To object and restrain the animal, my niece Reeta Devi and I went to Rambali's house. The accused persons Rambali, Dilip, Sanjay, and Santram became infuriated and, acting in furtherance of a common intention, armed themselves with *lathis* and sticks, and began beating me while hurling filthy abuses.

34.When Reeta and I raised an alarm, my father arrived from our house, and Ram Awadh, Jagannath, Ram Ujagiren, and several neighbours reached the spot and intervened to save us. Due to the *lathi* blow, a bone near my forehead above the right eyebrow was fractured. It was bleeding heavily. I fell unconscious on the ground at the spot. When I regained consciousness, I found myself at the District Hospital, Faizabad. I was feeling dizzy repeatedly

at the hospital. The report of the incident was lodged by my father. The Daroga ji had recorded my statement."

35. Cross-Examination of PW-3 (Shri Ram)- On being cross-examined by the defence, PW-3 Shri Ram stated:

36. "Prior to sustaining the injuries, I had no enmity with the accused persons. I sustained injuries on the metalled road leading from Akbarpur to Tanda. Vehicles frequently ply on that road. It gets dark by 7:00 PM in the month of September. On the southern side of the place of occurrence is Ram Achal's cement shop, [*Witness amends*] then stated it is Virendra's shop. On the northern side, across the road, lies vacant railway land. The house of the accused persons is located towards the west, after a row of several houses. My house is situated 100 meters north of the place of occurrence. The house of the accused persons is adjacent to the spot, followed by my house.

37. The Daroga ji had questioned me regarding the incident. In my statement to the Daroga ji, I had stated the time of the incident to be 7:00 PM. If the Daroga ji has not recorded the time as 7:00 PM in my statement, I cannot state the reason for it. I had informed the Daroga ji about the cow consuming our cattle fodder. If the Daroga ji has not recorded the fact about the cow eating the fodder in my statement, I cannot state the reason for it.

38. I sustained only a single injury. As soon as I received the first blow, I became unconscious. I cannot state what transpired after that. It is wrong to suggest that I sustained injuries in a road accident on the highway. It is also wrong to suggest that I am deposing falsely at the instigation of others. It is also wrong to suggest that no such incident occurred as stated by me."

39. Testimony of PW-4 (SI Santosh Kumar Shukla- Investigating Officer) in Examination-in-Chief- Prosecution Witness No. 4, Sub-Inspector Santosh Kumar Shukla, deposed on oath during his examination-in-chief on July 3, 2019, as follows:

40. "On September 30, 2015, I was posted as the Outpost In-charge of Sakrawal under Police Station Kotwali Tanda. In my absence, NCR No. 47/2015 under Sections 323 and 504 IPC was registered. Subsequently, based on the medical report, Sections 325 and 308 IPC were added, and the investigation of Case Crime No. 204/2015 under Sections 323, 504, 325, and 308 IPC was handed over to me on December 21, 2015.

41. I received the relevant documents from the police station office, perused them, and recorded the copy of the Chik NCR in the Case Diary (CD). Thereafter, I recorded the statement of the scribe of the NCR, Constable Vinay Kumar Mishra, in the CD. Following

this, I recorded the statement of Constable Amar Bahadur Singh, the scribe who made the entries for alteration of sections and registration. I noted the copies of the X-ray report and discharge slip in the CD.

42. On the very same day, I recorded the statements of the Informant Ram Pyare Prajapati, eyewitnesses Ram Awadh Prajapati, Jagannath, Ram Ujagiren, the injured Shri Ram, and Smt. Reeta Devi in the CD. I also inspected the place of occurrence at the instance of the Informant and prepared the site plan (Ex. Ka-2), which is in my handwriting and bears my signature, and I confirm it.
43. On January 4, 2016, I recorded the statement of Dr Surjit Singh through mobile phone in the CD. Thereafter, I recorded the statements of the accused persons Dilip Kumar, Santram, Rambali, and Sanjay. Based on the findings of the investigation, I submitted the charge sheet against the aforementioned accused persons to the court on January 4, 2016. The charge sheet is in my handwriting and bears my signature, which I confirm, and it has been marked as Exhibit Ka-3."
44. **Cross-Examination of PW-4 (SI Santosh Kumar Shukla)**- On being cross-examined by the defence, PW-4 Sub-Inspector Santosh Kumar Shukla stated:
45. "A brief summary of the investigation conducted on any given day is recorded by me in the General Diary (GD) of that day. During the investigation, I received the medical report from the PHC regarding the injured, which I have referenced in the CD. [*Witness amends*] The medical report from the PHC was not received by me. Only the X-ray report and discharge slip were received, which I have noted in the CD.
46. In Parcha No. 1 of the Case Diary, based on the discharge slip of the injured Shri Ram, I have recorded his date of admission as September 30, 2015, and time as 2:45. Witness Ram Pyare had informed me that the opposite party had beaten him upon lodging an objection (*ulahna*); he did not state that Shri Ram had specifically gone to the residence of the accused persons to lodge the objection. Witness Ram Awadh had informed me that when he reached the spot, Shri Ram had already fallen unconscious.
47. The X-ray report received by me bears the date October 5, 2015. I invoked Sections 325 and 308 IPC in the charge sheet based on a single X-ray report. When I received the case diary documents for investigation, the case had already been transferred to me with Sections 325 and 308 IPC added. It is wrong to suggest that I did

not visit the place of occurrence and completed the entire proceedings while sitting at the police station."

48. Testimony of PW-5 (Dr Surjit Singh) in Examination-in-Chief- Prosecution Witness No. 5, Dr Surjit Singh, deposed on oath during his examination-in-chief on July 3, 2019, as follows:

49. "On September 30, 2015, I was posted as a Medical Officer at the District Hospital, Ambedkar Nagar. On that day, the injured Shri Ram was admitted to the District Hospital and was discharged on the same day, being referred to the District Hospital, Faizabad, for a CT scan and further advanced treatment. The discharge slip is Paper No. 5A/4, which is in my handwriting and bears my signature. I confirm its contents, and it has been marked as Exhibit Ka-4. I do not recall whether the Daroga ji recorded my statement or not."

50. Cross-Examination of PW-5 (Dr Surjit Singh)- On being cross-examined by the defence, PW-5 Dr Surjit Singh stated on oath:

51. "Exhibit Ka-4 is a photocopy. The original document is not present before me in the court today. The exact time at which the injured was admitted is not clearly legible; however, it was during the evening. I am not aware whether the injured underwent any medical examination prior to his admission here. I did not prepare any supplementary medical report for the injured."

52. Testimony of PW-6 (Dr U.C. Tiwari - Radiologist) in Examination-in-Chief- Prosecution Witness No. 6, Dr U.C. Tiwari (Retired), deposed during his examination-in-chief on May 18, 2022, as follows:

53. "On October 5, 2015, I was posted as a Senior Consultant Radiologist at the District Hospital, Faizabad. On that day, the injured patient Shri Ram Prajapati, aged about 50 years, son of Shri Ram Pyare, who was admitted to the District Hospital, was referred to me by the treating physician for a CT scan of the head. Under my supervision, my CT scan technician conducted the CT scan of the referred head region.

54. Upon perusal of the CT scan plate, a fracture of the right frontal bone was observed, along with a contusion in the right frontal bone, which I recorded in the report in my handwriting and under my signature. The report was verified by me after taking the left thumb impression of the injured person. The report and the CT scan plate were handed over to the person who came to collect them, to be sent back to the treating/referring doctor for appropriate and necessary action.

55. The original CT scan report, Paper No. 5A/3 on record, is present before me; it is in my handwriting and bears my signature, which

I confirm, and it has been marked as Exhibit Ka-5. The CT scan plate numbered 53/9 on record is also before me, which I confirm, and it has been marked as Material Object Exhibit-1."

56. Cross-Examination of PW-6 (Dr U.C. Tiwari)- On being cross-examined by the defence, PW-6 Dr U.C. Tiwari (Retired) stated:

57."The injured was admitted to the District Hospital, Faizabad. The date of referral was not written by the referring doctor on the referral letter. I cannot state when the injured patient was admitted to the District Hospital. I handed over the report and the CT scan plate to the person who came to collect them and sent them to the referring doctor for necessary action.

58.These injuries/fracture could have occurred at any time within a period of fifteen days. I cannot state whether these injuries/fracture could be caused by falling forward on the face. This aspect can only be clarified by the doctor who conducted the initial medico-legal examination."

59. Testimony of PW-7 (HC Vinay Kumar Mishra) in Examination-in-Chief- Prosecution Witness No. 7, Head Constable Vinay Kumar Mishra, deposed during his examination-in-chief on September 23, 2022, as follows:

60."On September 30, 2015, I was posted at Police Station Kotwali Tanda and was on desk duty. I prepared the General Diary (GD) entry regarding the registration of NCR No. 47/2015/139 in my handwriting and signature, which is recorded as Rapat No. 36 at 21:35 hours on September 30, 2015, containing the complete details of the registration of the NCR. This registration GD entry, Paper No. 5A/1, is available on record; it is in my handwriting and bears my signature, which I confirm, and it has been marked as Exhibit Ka-6.

61.The Chik NCR was prepared by my colleague, Constable Moharrir Amar Bahadur Singh, who dictated it to the computer operator. I have seen Constable Amar Bahadur writing and signing, and I recognise his handwriting and signature. The photocopy of the Chik NCR, Paper No. 4A/1 on record, is a certified copy, which I confirm, and it has been marked as Exhibit Ka-7. Constable Moharrir Amar Bahadur has passed away."

62. Cross-Examination of PW-7 (HC Vinay Kumar Mishra)- On being cross-examined by the defence, PW-7 Head Constable Vinay Kumar Mishra stated:

63."The original volume register of the Chik NCR is not present before me today. Exhibit Ka-7 is a photocopy of the NCR. It does not bear the seal of the police station or the signature/stamp of the In-charge Head Constable. This NCR was written based on the

written complaint (*tahrir*) submitted by the Informant. However, the written complaint submitted by the Informant is neither before me nor enclosed in the case file. No medical report was produced before me by the Informant at the time of registering the case.

64. During the recording of Exhibit Ka-6, when the Informant was questioned regarding the medical examination, he stated that his granddaughter had already been treated and his son had been sent to CHC Tanda, adding that there was no immediate need for a medical examination report at that moment. To my knowledge, no preliminary treatment medical report of the injured parties was submitted to the police station. The GD entry, Exhibit Ka-6, is a photocopy. The original GD is not present before me in court today. It is wrong to suggest that I have intentionally antedated the registration of the NCR."

Testimony of the Injured Witness (PW-3) and Eyewitnesses (PW-1 & PW-2)

65. The prosecution's case hinges heavily on the testimony of the injured witness, Shri Ram (PW-3). He deposed clearly that on September 30, 2015, at 7:00 PM, when he and his niece went to complain about the cow eating their fodder, all the accused persons attacked him with *lathis* and *dandas*. He explicitly stated that a *lathi* blow struck his right eyebrow/forehead area, fracturing the bone, causing heavy bleeding, and knocking him unconscious.

66. This version is completely fortified by the Informant, Ram Pyare (PW-1), and an independent relative/neighbour, Ram Awadh (PW-2), who corroborated the manner of assault, the weapons used, and the immediate dispatch of the unconscious victim to the hospital via a 108 ambulance.

67. The deposition of an injured witness enjoys a high judicial premium. The Supreme Court of India in [*State of U.P. v. Naresh \(2011\) 4 SCC 324*](#) held:

"The evidence of an injured witness must be given due weight. His presence at the time and place of the occurrence cannot be doubted easily. Unless there are strong grounds to reject his evidence, it must be accepted."

The defence failed to shake the credibility of PW-3 during cross-examination. His testimony remains cogent, consistent, and convincing.

Medical Evidence and the Nature of Injury

68. The medical jurisprudence aspect completely substantiates the ocular testimony:

PW-5 (Dr Surjit Singh) proved the Discharge Slip (**Ex. Ka-4**), confirming that Shri Ram was admitted to the District Hospital, Ambedkar Nagar, on September 30, 2015, in a serious condition and was referred to Faizabad for an advanced CT scan of the head. Though the discharge slip is photocopied and records of the hospital were not brought, this is not material as no medico-legal report was prepared or effective treatment was given at the District Hospital, Ambedkar Nagar. It remained only a referral hospital. It is the IO's fault. Any fault of the IO which does not go to the root of the case is immaterial.

69. **PW-6 (Dr U.C. Tiwari)**, the Senior Consultant Radiologist, proved the CT Scan Report (**Ex. Ka-5**) and the CT Plate (**Material Object Ex.-1**). His expert evaluation revealed a **fracture of the right frontal bone** along with a contusion.

Under Section 320 (Seventhly) of the IPC, "fracture or dislocation of a bone or tooth" is explicitly designated as **grievous hurt**. The presence of a frontal bone fracture directly brings the offence within the ambit of Section 325 IPC.

EVALUATION OF DEFENSE ARGUMENTS & CLINCHING FINDINGS

70. **The Road Accident Theory-** The defence argued that Shri Ram sustained injuries in a road traffic accident. However, this argument falls flat on two counts. First, all eye-witnesses and the injured witness vehemently denied any accident. Second, a road traffic accident generally results in friction injuries, abrasions, or multiple lacerations scattered across bodily regions. Here, a specific, deep impact on the frontal bone caused by a blunt force object perfectly aligns with a targeted *lathi* blow as narrated by the witnesses.

The Alleged Time Discrepancy on the Discharge Slip

71. The defence tried to point out that the discharge slip showed a time of 2:45, which predated the incident. The prosecution successfully clarified this by demonstrating that the handwritten symbol = on the document was being misinterpreted or misread as 2 by the defence to mislead the court. The actual timing was 10:45 PM (22:45 hrs), which perfectly follows a 7:00 PM incident and subsequent transport via ambulance.

Application of Section 34 IPC (Common Intention)

72. The defence claimed that there was no prior enmity, so there could be no common intention. It is a settled position of law that common intention can develop on the spot. In *Mahbub Shah v. Emperor (1945) LA 148*, it was established that a common intention implies a pre-arranged plan, but such a plan can develop concurrently with the commencement of the fight. When all three accused individuals rushed out armed with *lathis* and *dandas* simultaneously to attack a single unarmed man over a petty dispute regarding cattle fodder, their actions demonstrated a shared intent to cause harm.

Downgrading from Section 308 IPC to Section 325 IPC

73. To attract Section 308 IPC (Attempt to commit culpable homicide), the prosecution must establish that the accused had the intent or knowledge that their act could cause death.

A fracture of the frontal bone does not *ipso facto* attract Section 308 IPC. The applicability of Section 308 depends primarily upon the **intention or knowledge** attributable to the accused and the surrounding circumstances of the assault, not merely upon the nature of the injury.

74. Under Section 320 IPC, any fracture of a bone is “grievous hurt”. Therefore, a frontal bone fracture ordinarily satisfies the ingredients of grievous hurt and may readily attract Section 325 IPC. However, Section 308 IPC requires something more, namely:

- intention or knowledge that the act was likely to cause death;
- assault on a vital part;
- nature of weapon used;
- force employed;
- medical opinion that injury was dangerous to life or capable of causing death.

75. The Supreme Court and High Courts have repeatedly held that even skull or frontal bone fractures do not automatically constitute an offence under Section 308 IPC unless the prosecution establishes the requisite mens rea.

For example:

- Where the injury consisted merely of a minor or linear frontal bone fracture without intracranial complications, courts have often

treated the case under Sections 323/325 IPC rather than Section 308 IPC.

- Conversely, where the blow was intentionally aimed at the head with substantial force, using a dangerous weapon, and the injury was opined to be dangerous to life – such as frontal bone fracture with pneumocephalus or brain involvement – courts have upheld Section 308 IPC.

76. Therefore, the correct legal position is:

1. **Frontal bone fracture = grievous hurt per se** (Section 320 Seventhly).
2. **Section 308 IPC is not automatic.**
3. It depends upon:
 - weapon used,
 - seat of injury,
 - force of assault,
 - medical opinion,
 - intention/knowledge inferred from circumstances.

77. Thus, if the fracture is simple/non-depressed and not dangerous to life, Section 325 IPC may be more appropriate. But if the assault on the head was deliberate and sufficiently dangerous to cause death, Section 308 IPC can validly be invoked.

- In the present case, the incident arose out of a sudden, spontaneous dispute over a cow consuming fodder.
- There was no premeditated design to take a life.
- Only a single grievous blow landed on the head, and the accused did not repeatedly strike the head after the victim fell.
- Unconsciousness is not backed by medical evidence.
- The weapon was a lathi-dunda.

78. Therefore, the required legal threshold of intention or knowledge to cause death under Section 308 IPC is missing. However, the accused undeniably possessed the knowledge that hitting someone on the head with a *lathi* could cause a fracture. Thus, the offence safely scales down from Section 308 IPC to Section 325 IPC (Voluntarily causing grievous hurt) read with Section 34 IPC.

FINAL FINDINGS & CONCLUSION

- **Offence under Section 308 IPC: NOT PROVED.** The accused are acquitted of charges under Section 308 IPC.
- **Offence under Section 504 IPC: NOT PROVED.** The specific words causing a breach of public peace were not adequately detailed in the evidence.
- **Offence under Section 325 read with 34 IPC: FULLY PROVED.** The prosecution has established beyond any reasonable doubt that the accused Dilip, Santram, and Sanjay, in furtherance of their common intention, voluntarily caused grievous hurt (frontal bone fracture) to Shri Ram.
- **Offence under Section 323 read with 34 IPC: FULLY PROVED.** Simple injuries were caused to the injured parties during the same transaction.

8. ORDER

The accused Dilip, Santram, and Sanjay are hereby **CONVICTED** for the offences punishable under **Section 325 read with Section 34 IPC**. Since **Section 325** is a graver form of **Section 323**, there is no need to convict/punish under Section 323 also.

They stand **ACQUITTED** of charges under Sections 308/34 and 504 IPC.

The bail bonds of the convicted persons are cancelled, and they are taken into judicial custody.

Let the convicts be produced before this Court on the next working day for a hearing on the quantum of sentence.

Judgment pronounced, dated, and signed in open court.

Date: May 29, 2026

(Chandroday Kumar)
Sessions Judge,
Ambedkar Nagar

June 1, 2026

The accused appeared in court from jail on May 30, 2026. The counsel for the convicts requested benefits under the Probation of Offenders Act, 1958. The prosecution sought additional time to respond, which was granted since the convicts did not object. The case was scheduled for a hearing on the quantum of sentence on June 1, 2026.

Today, the injured party, who filed the complaint, appeared in court and opposed the benefits under the Probation of Offenders Act, 1958. They

stated that family members of the convicts had threatened them if they opposed such benefits. The learned District Government Counsel (Criminal) presented the criminal history of convict Dilip, which included two cases: one under Crime No. 131/2021 for offenses under sections 323, 504, and 506 of the Indian Penal Code (IPC), and another under Crime No. 239/2024 for offenses under sections 115(2), 351(3), and 352 BNS, both filed at the police station in Tanda, Ambedkar Nagar. Both cases have been chargesheeted, and he argued that maximum punishment should be awarded.

On the other hand, the counsel for the convicts argued that the incident occurred on September 30, 2015, over a trivial matter and that the trial has been pending since 2017. The accused, Dilip, has not yet been convicted in the other cases. They also highlighted that the convicts are family men with responsibilities towards their families.

Considering all the mitigating and aggravating factors, I find that a sentence of three years of rigorous imprisonment and a fine of Rs. 5,000 each under section 325 IPC would serve the interests of justice.

ORDER

Upon conviction under section 325 IPC, the accused – Dilip, Santram, and Sanjay – are hereby sentenced to three years of rigorous imprisonment and a fine of Rs. 5,000 each.

In default of payment of the fine, each convict shall serve an additional three months of imprisonment.

The time spent in jail shall be set off against the sentence.

Date: June 1, 2026

(Chandroday Kumar)
Sessions Judge,
Ambedkar Nagar

Order pronounced, dated, and signed in open court.

Date: June 1, 2026

(Chandroday Kumar)
Sessions Judge,
Ambedkar Nagar