



2026:CGHC:18642-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 234 of 2024**

Setram Nagesia S/o Kuwarsai Nagesia Aged About 31 Years
Occupation- Agriculture, R/o Village Tongripara, Police Station- Batouli,
District- Surguja, C.G.

... Appellant(s)**versus**

State of Chhattisgarh Through S.H.O. Police Station- Batouli, District
Surguja, C.G.

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Chitendra Singh, Advocate.
For Respondent/State	:	Ms. Anusha Naik, Deputy Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****23.04.2026**

1. Heard Mr. Chitendra Singh, learned counsel for the petitioner. Also heard Ms. Anusha Naik, learned Deputy Government Advocate, appearing for the State/respondent.



2. Though the matter is listed today for hearing on I.A. No. 1 of 2024 (application for suspension of sentence and grant of bail), however, considering that the appellant has been in custody since 07.10.2022, and with the consent of learned counsel for the parties, the appeal is taken up for final hearing.
3. This criminal appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'CrPC') is directed against the impugned judgment dated 23.12.2023 passed by the learned Session Judge, Surguja (Ambikapur), District Surguja (C.G.) (for short, 'learned trial Court'), in Session Case No. 189 of 2022, by which the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence
Section 302 of the Indian Penal Code (<i>for short</i> , 'IPC'), amended Section 103 of the Bharatiya Nyaya Sanhita (for short, 'BNS')	Rigorous imprisonment (<i>for short</i> , 'R.I.') for life and fine of Rs. 1000/-, in default of payment of fine, 06 months R.I. more.
Section 323 of the IPC	R.I. for 03 months and fine of Rs.100/-, in default of payment of fine, 01 month R.I. more.
<i>All the sentences awarded shall run concurrently.</i>	

4. The case of the prosecution, in brief, is that the appellant, a resident of village Taragi under Police Station Batouli, lived there with his family. On 06.11.2022 at about 5:00 p.m., the appellant was discussing the sale of land with the village watchman. At that time, his



uncle Nansai (PW-1) and aunt Basanti were also present. During the discussion, a dispute arose between the appellant and his uncle Nansai. The appellant started quarreling, questioning why cattle had been tied there, and began untethering them. Nansai and Basanti objected and tried to stop him. Thereafter, near the watchman's house, the appellant picked up a wooden channel (used for bending iron rods), abused them, and threatened to kill Basanti. He struck her on the head with the said object, causing her to fall on the spot with profuse bleeding. When Nansai intervened, the appellant assaulted him with fists and attempted to strangulate him. At that moment, Pakas Uraon intervened and rescued Nansai. Due to the assault, Basanti died.

5. On receiving information of Basanti's death from Nansai, Sub-Inspector Pramod Kumar Pandey (PW-12) registered merg intimation No. 57/2022 (Ex.P/1) at Police Station Batouli. Based on the report, FIR No. 137/2022 was registered under Sections 294, 506, 323, and 302 of the IPC (Ex.P/2). Injured Nansai was sent for medical examination (Ex.P/17). During investigation, the inquest (Ex.P/5) was prepared after issuing notice (Ex.P/4), and a spot map (Ex.P/3) was drawn. The postmortem report (Ex.P/18), proved by Dr. Umang Bothra (PW-8), opined that the death was due to coma resulting from head injury and was homicidal in nature.

6. On 07.11.2022, the appellant was taken into custody and interrogated. His memorandum statement (Ex.P/13) led to the recovery of the wooden channel used in the offence from his backyard, which



was seized (Ex.P/14) in the presence of witnesses. Blood-stained and plain soil were seized from the spot (Ex.P/12). The seized weapon was sent for medical opinion, and report (Ex.P/19) confirmed that the injuries could have been caused by the said object.

7. A requisition (Ex.P/23) was sent for preparation of the patwari map. The appellant was arrested (Ex.P/15). The clothes of the deceased were seized (Ex.P/21) and sent to the Forensic Science Laboratory, Ambikapur, from where report (Ex.P/24) was received. Statements of witnesses were recorded under Section 161 of the CrPC.

8. Upon completion of investigation, a charge-sheet was filed before the competent Court, and the case was committed to the Court of Session for trial.

9. The learned trial Court framed charges under Sections 294, 506 Part II, 302, and 323 of the IPC. The appellant denied the charges and claimed trial, pleading false implication.

10. The prosecution examined 13 witnesses and exhibited 25 documents. The appellant did not adduce any defence evidence.

11. By judgment dated 23.12.2023, the learned trial Court convicted the appellant under Sections 302 and 323 of the IPC and sentenced him accordingly, which is under challenge in the present appeal.

12. Learned counsel for the appellant submits that the conviction under Section 302 of the IPC is unsustainable as the prosecution has failed to prove the case beyond reasonable doubt. It is contended that



the incident occurred in a sudden quarrel without premeditation, in the heat of passion, and therefore, falls within Exception 4 to Section 300 of the IPC (now corresponding to Section 100 of the BNS). It is argued that, at best, the offence would amount to culpable homicide not amounting to murder punishable under Section 304 Part I or Part II of the IPC (now Sections 101/102 BNS).

13. *Per contra*, learned State counsel supports the impugned judgment and submits that the case does not fall within any exception. It is contended that the conviction under Sections 302 and 323 of the IPC is justified and calls for no interference.

14. We have heard learned counsel for the parties and carefully perused the record.

15. The first question for consideration is whether the death of the deceased was homicidal in nature.

16. Dr. Umang Bothra (PW-8), who conducted the postmortem on 07.10.2022 at about 2:40 p.m., found a lacerated wound (5 × 3 × 2 cm) on the parietal-occipital region, along with skull fracture, extradural, subdural, and intracerebral hemorrhages, and a tear in the meninges. He opined that the injuries were caused by a hard and blunt object, were ante-mortem, grievous, and sufficient to cause death. The cause of death was coma due to head injury, and the nature of death was homicidal. He proved the postmortem report (Ex.P/18), and his testimony remained unshaken. Thus, the homicidal nature of death stands conclusively established, and the finding of the learned trial



Court in this regard is affirmed.

17. The next question is whether the appellant is the author of the crime. The learned trial Court has rightly relied upon the testimony of Nansai (PW-1), the eyewitness, who categorically stated that the appellant struck the deceased on the head with a wooden channel. His testimony is corroborated by medical evidence. From the evidence on record, it is clearly established that the appellant inflicted the fatal injury on the deceased. The finding of the learned trial Court on this aspect is well-founded and is hereby affirmed.

18. This leads to the next question: whether the case falls within Exception 4 to Section 300 of the IPC (corresponding to Section 100 of the BNS), and whether the conviction can be altered to culpable homicide not amounting to murder under Section 304 of the IPC (now Sections 101/102 BNS), as contended by the learned counsel for the appellant.

19. The Hon'ble Supreme Court in the matter of **Sukhbir Singh v. State of Haryana**¹ has observed as under:-

“21. Keeping in view the facts and circumstances of the case, we are of the opinion that in the absence of the existence of common object Sukhbir Singh is proved to have committed the offence of culpable homicide without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and did

¹ (2002) 3 SCC 327



not act in a cruel or unusual manner and his case is covered by Exception 4 of Section 300 IPC which is punishable under Section 304 (Part I) IPC. The finding of the courts below holding the aforesaid appellant guilty of offence of murder punishable under Section 302 IPC is set aside and he is held guilty for the commission of offence of culpable homicide not amounting to murder punishable under Section 304 (Part I) IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5000. In default of payment of fine, he shall undergo further rigorous imprisonment for one year.”

20. The Hon’ble Supreme Court in the matter of **Gurmukh Singh v. State of Haryana**² has laid down certain factors which are to be taken into consideration before awarding appropriate sentence to the accused with reference to Section 302 or Section 304 Part II of the IPC, which state as under :-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under :

2 (2009) 15 SCC 635



- (a) Motive or previous enmity;*
- (b) Whether the incident had taken place on the spur of the moment;*
- (c) The intention/knowledge of the accused while inflicting the blow or injury;*
- (d) Whether the death ensued instantaneously or the victim died after several days;*
- (e) The gravity, dimension and nature of injury;*
- (f) The age and general health condition of the accused;*
- (g) Whether the injury was caused without premeditation in a sudden fight;*
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;*
- (i) The criminal background and adverse history of the accused;*
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;*
- (k) Number of other criminal cases pending*



against the accused;

(l) Incident occurred within the family members or close relations;

(m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment ?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.

24. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused."

21. Likewise, in the matter of **State v. Sanjeev Nanda**³, their

³ (2012) 8 SCC 450



Lordships of the Hon'ble Supreme Court have held that once knowledge that it is likely to cause death is established but without any intention to cause death, then jail sentence may be for a term which may extend to 10 years or with fine or with both. It has further been held that to make out an offence punishable under Section 304 Part II of the IPC, the prosecution has to prove the death of the person in question and such death was caused by the act of the accused and that he knew that such act of his is likely to cause death.

22. Further, the Hon'ble Supreme Court in the matter of **Arjun v. State of Chhattisgarh**⁴ has elaborately dealt with the issue and observed in paragraphs 20 and 21, which reads as under :-

“20. To invoke this Exception 4, the requirements that are to be fulfilled have been laid down by this Court in Surinder Kumar v. UT, Chandigarh [(1989) 2 SCC 217 : 1989 SCC (Cri) 348], it has been explained as under : (SCC p. 220, para 7)

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor its I relevant who offered the provocation or started

4 (2017) 3 SCC 247



the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

21. Further in Arumugam v. State [(2008) 15 SCC 590 : (2009) 3 SCC (Cri) 1130], in support of the proposition of law that under what circumstances Exception 4 to Section 300 IPC can be invoked if death is caused, it has been explained as under : (SCC p. 596, para 9)

“9. '18. The help of exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the



ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in the Penal Code, 1860. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression “undue advantage” as used in the provisions means “unfair advantage”.

23. In the matter of **Arjun** (supra), the Hon’ble Supreme Court has held that if there is intent and knowledge, the same would be case of Section 304 Part-I of the IPC and if it is only a case of knowledge and



not the intention to cause murder and bodily injury, then same would be a case of Section 304 Part-II of the IPC.

24. Further, the Hon'ble Supreme Court in the matter of **Rambir v. State (NCT of Delhi)**⁵ has laid down four ingredients which should be tested to bring a case within the purview of Exception 4 to Section 300 of IPC, which reads as under:

“16. A plain reading of Exception 4 to Section 300 IPC shows that the following four ingredients are required:

- (i) There must be a sudden fight;*
- (ii) There was no premeditation;*
- (iii) The act was committed in a heat of passion; and*
- (iv) The offender had not taken any undue advantage or acted in a cruel or unusual manner.”*

25. In this regard, Nansai (PW-1), the husband of the deceased and an eyewitness, has deposed in paragraphs 1 and 2 of his examination-in-chief that he knows the appellant, who is his nephew, and that the deceased Basanti was his wife. He further stated that about six months prior to the incident, the appellant had taken his wife to his house on the pretext of offering liquor. He also deposed that the appellant had earlier

⁵ (2019) 6 SCC 122



sold his own land and was attempting to acquire his land, due to which there existed a dispute between them. He further submits that on the date of the incident, when he returned after grazing cattle and was tying them, the appellant started untethering his cattle. Despite his objection, the appellant did not stop. His wife also intervened, but the appellant paid no heed and struck her on the head with a wooden channel (used for bending iron rods), causing her to fall on the spot. When he attempted to rescue her, the appellant assaulted him with fists and blows, knocked him down, and attempted to strangle him. At that juncture, Pakas Uraon arrived and rescued him. By then, his wife had succumbed to the injuries. Thereafter, Rajendra and Dhanu Bunakar reached the spot. The witness also sustained injuries on his arms, legs, chest, and neck.

26. The witness further deposed that immediately after the incident, he, along with Rajeshwar Uraon and Rajendra Uraon, went to Police Station Batouli, where he lodged the merged intimation (Ex.P/1) and the FIR (Ex.P/2).

27. In support of PW-1, the prosecution examined Paikas Kujur (PW-2), Kunti Bai (PW-3), and Dhanu (PW-4). However, PW-2 merely stated that he saw the deceased lying injured with bleeding near the watchman's house and that Nansai and the appellant were present there. PW-3 and PW-4 did not witness the incident and only heard about the death. These witnesses were declared hostile and did not materially support the prosecution case.



28. Rajendra (PW-5) deposed that Nansai informed him about the death of Basanti and took him to the police station, where the report was lodged. Similarly, Rajeshwar (PW-6), the village watchman, stated that upon returning home, he found Basanti lying dead with a head injury and profuse bleeding. He further stated that Nansai informed him that the appellant had assaulted Basanti with a wooden channel and had also beaten him, after which they went to the police station and lodged the report.

29. Sub-Inspector Pramod Kumar Pandey (PW-12) has proved that on 07.10.2022, upon information given by Nansai, merg No. 57/2022 (Ex.P/1) and FIR No. 137/2022 (Ex.P/2) were registered. He further proved the preparation of the spot map (Ex.P/3), seizure of blood-stained and plain soil (Ex.P/12), sending of the dead body for postmortem (Ex.P/18), and recording of the memorandum of the appellant (Ex.P/13), pursuant to which the wooden channel was recovered and seized (Ex.P/14). However, seizure witnesses Rajendra (PW-5) and Rajeshwar (PW-6), though admitting their signatures on the memorandum and seizure memos, did not support the prosecution case regarding recovery and were declared hostile. They denied that any disclosure statement was made by the appellant or that recovery was effected in their presence. It is well settled that such hostility does not *ipso facto* render the recovery inadmissible, particularly when supported by other cogent evidence. Any alleged confessional statement before police remains inadmissible under Section 25 of the Evidence Act.



30. Further, the testimony of PW-1 regarding assault on him is corroborated by the evidence of Dr. Priya Singh Thakur (PW-7), who examined him on 07.10.2022 and found multiple abrasions near the right knee and swelling with pain in the neck. She opined that the injuries were simple in nature and caused within 18–19 hours prior to examination (Ex.P/17). This lends assurance to the version of PW-1.

31. Thus, the testimony of PW-1, being natural, consistent, and corroborated by medical and circumstantial evidence, inspires confidence and is sufficient to establish that the appellant inflicted the fatal injury on the deceased.

32. Reverting to the facts of the present case, it emerges from the evidence on record that, although there existed a prior land dispute between the parties, the incident in question occurred on account of a sudden quarrel relating to tying and untethering of cattle. The weapon used was a wooden channel picked up from the spot itself. There is no evidence of premeditation, nor is there material to show that the accused had come prepared to commit the offence.

33. The circumstances clearly indicate that the act was committed in the heat of passion upon a sudden quarrel. Although there existed a prior land dispute between the parties, the evidence on record does not suggest that the appellant acted pursuant to any premeditated plan to cause the death of the deceased. The assault appears to have been triggered by the immediate altercation relating to untethering of cattle. The weapon used was a wooden channel picked up from the spot,



further negating prior preparation. Though the injury inflicted proved fatal, there is no material to establish that the appellant took undue advantage or acted in a cruel or unusual manner beyond the act itself. The occurrence appears to be a result of a sudden fight in the course of a verbal altercation which escalated spontaneously.

34. In view of the aforesaid, this Court is of the considered opinion that the present case squarely falls within Exception 4 to Section 101 of the BNS (corresponding to Exception 4 to Section 300 of the IPC), as the act was committed without premeditation, in a sudden fight, and in the heat of passion upon a sudden quarrel.

35. Consequently, the conviction of the appellant under Section 302 of the IPC (now corresponding to Section 103 of the BNS) is liable to be altered to one under Section 304 Part II of the IPC (now corresponding to Section 104 of the BNS), as the appellant can be attributed with knowledge that his act was likely to cause death, but without the intention to cause death.

36. Considering the totality of the circumstances, including the nature of injury, the manner of occurrence, and the fact that the appellant has been in custody since 07.10.2022, this Court deems it appropriate to sentence him to undergo rigorous imprisonment for a period of 07 years. The fine amount and default stipulation imposed by the learned trial Court shall remain unaltered. The conviction and sentence of the appellant under Section 323 of the IPC are hereby affirmed.

37. The appellant is in custody and shall serve out the remaining



sentence as modified hereinabove.

38. The criminal appeal is **partly allowed** to the extent indicated above. In view of the final disposal of the appeal, I.A. No. 1 of 2024 stands **disposed of** as having become infructuous.

39. The Registry is directed to transmit a copy of this judgment to the Superintendent of the concerned Jail for compliance and to inform the appellant that he is at liberty to prefer an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee. Let a certified copy of this judgment along with the original record be sent to the trial Court forthwith for information and necessary compliance.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice