



2026:CGHC:9036-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 217 of 2021**

1 - Harikrishno Sahu S/o Manijer Sahu Aged About 23 Years R/o Village Chhote Khaira, Police Station Sarangarh, District Raigarh Chhattisgarh.

--- Appellant**versus**

1 - State of Chhattisgarh Through District Magistrate Raigarh District Raigarh Chhattisgarh.

--- Respondent(s)**with****CRA No. 240 of 2021**

1 - Vinod Kumar Sahu S/o Makund Ram Sahu Aged About 28 Years R/o Village Chhote Khaira, Police Station Sarangarh, District Raigarh Chhattisgarh

---Appellant**Versus**

1 - State of Chhattisgarh Through The Station House Officer, Police Station Sarangarh, District Raigarh Chhattisgarh



--- Respondent(s)

For Appellant	:	Ms. Indira Tripathi along with Mr. Kishan Kumar Yadav, Advocate in CRA No. 217 of 2021 Mr. Raghvendra Pradhan, Advocate in CRA No. 240/2021
For Respondent(s)/State	:	Mr. Atanu Ghosh, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**Hon'ble Shri Justice Radhakishan Agrawal****Judgment on Board****Per Rajani Dubey, J.****20/02/2026**

1. Since both the appeals arise out of a single impugned judgment they were heard together and are being disposed of by this common judgment.
2. These criminal appeals have been filed under Section 374(2) of the Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 20.01.2021 passed by the learned Additional Sessions Judge, Sarangarh, District Raigarh (C.G.) in Sessions Trial No. 08/2018. By the impugned judgment, each of the appellants has been convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 323/34 of IPC (in two counts)	R.I. for three- three months and fine of Rs.500/- - 500/-, in default of payment of fine to further undergo S.I. for fifteen-fifteen days
Under Section 304 Part-I of IPC	R.I. for ten years and fine of Rs.



	2,000/-, in default of payment of fine to further undergo R.I. for six months (Both the sentences to run concurrently)
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3. The prosecution case is that the complainant Ramlal Sahu, resident of village Chhote Khaira, had an earlier land and village dispute with the accused persons. Prior to the incident, he was assaulted in a Panchayat meeting and socially boycotted by members of the Sahu community. On 08.01.2018, accused Manjar Sahu along with Tularam Sahu, Harikrishna Sahu, Vishnu Sahu and others called the complainant near the field and assaulted him and his son Yadaram with stones and sticks. When the complainant's wife Kenvarbai intervened, the accused persons collectively assaulted her with sticks and fists, causing fatal injuries, as a result of which she died at the spot near the old pond. Injuries were also caused to the complainant and his son.

On the basis of the report of the complainant, FIR (Ex.P/15) was registered at Police Station Sarangarh under Sections 147, 148, 302 and 323 IPC against the named accused and others. During investigation, inquest proceedings, post-mortem examination, medical examination of the injured, seizure of blood-stained soil, clothes and weapons, preparation of site maps, recording of statements under Section 161 CrPC and FSL examination were conducted, and a charge-sheet was filed under Sections 147, 148, 302, 323 and 109 IPC. The case being triable



by the Court of Sessions, it was committed to the Sessions Court.

Charges were framed against the accused, to which appellants abjured their guilt and claimed to be tried.

4. In order to prove the charges against the accused/appellants, the prosecution examined 24 witnesses. The statements of the accused/appellants were recorded under Section 313 Cr.P.C., wherein they denied all incriminating circumstances, asserting their innocence and alleging false implication. In defence, the appellants did not adduce any evidence.
5. Upon consideration and evaluation of the oral and documentary evidence adduced by both sides, the learned trial Court found the prosecution story reliable and by judgment dated 20.01.2021 convicted and sentenced the appellants in the manner stated in para 2 of the judgment. Hence, this appeal.
6. Learned counsel for the appellants respectfully submit that the impugned judgment and order of conviction dated 20.01.2021 is perverse, erroneous and contrary to law as well as the facts and circumstances of the case. It is submitted that the prosecution has failed to produce any cogent, reliable or legally admissible evidence connecting the appellants with the alleged offence. The conviction has been recorded merely on the testimony of interested witnesses, while the material prosecution witnesses did not support the prosecution case and were declared hostile. Further, there are material contradictions and omissions between



the case-diary statements and the depositions before the Court, rendering the prosecution evidence wholly unreliable. The learned Trial Court failed to properly appreciate the evidence on record and recorded findings which are baseless and contrary to the material available. The guilt of the appellants has not been proved beyond reasonable doubt and the sentence awarded is harsh and unsustainable in the eyes of law. Therefore, the impugned judgment is liable to be set aside.

Alternatively and without prejudice to the aforesaid submissions, it is humbly prayed that in the event this Court is not inclined to interfere with the conviction recorded against the appellants, the sentence imposed upon them may kindly be modified and restricted to the period already undergone. It is submitted that the alleged occurrence pertains to the year 2018 and the present appeal has remained pending since the year 2021. At the time of the incident, appellant- Harikrishno Sahu and appellant- Vinod Kumar Sahu, were aged about 23 years and 28 years respectively and are presently about 28 years and 33 years of age. The appellants have already undergone more than four years of incarceration during the course of investigation, trial and pendency of the appeal. Considering the long lapse of time, the protracted pendency of the appeal and the young age of the appellants at the time of the occurrence, it is respectfully prayed that the period already undergone by the appellants be treated as sufficient punishment in the interest of justice.



Reliance has been placed on the decisions of Hon'ble Supreme Court in the matter of **Bishnupada Sarkar and another Vs. State of West Bengal; (2012) 11 SCC 597** and **Ram Autar and others Vs. State of Uttar Pradesh; (2017) 2 SCC 449**.

7. On the other hand, learned counsel for the State submits that the impugned judgment of conviction and sentence passed by the learned trial Court is legal, proper and fully justified and thus calls for no interference by this Court. It is therefore contended that both the appeals, being devoid of merit are liable to be dismissed.
8. Heard counsel for the parties and perused the material placed on record.
9. From the record of the learned Trial Court, it transpires that charges were framed against the present appellants and certain co-accused persons under Sections 147, 148, 323/34 (two counts) and 302/34 of the Indian Penal Code. Separate charges under Sections 147, 148, 323/109 (two counts) and 302/109 of the Indian Penal Code were framed against the remaining co-accused persons. Upon appreciation of the oral as well as documentary evidence adduced by the prosecution, the learned Trial Court convicted the accused persons, namely, Tularam Sahu, Manijar Sahu, Harikrishno Sahu and Vinod Kumar Sahu, while acquitting the other co-accused persons.
10. Accused Tularam Sahu and Manijar Sahu were convicted for the offence punishable under Section 323/34 of the Indian Penal



Code (two counts), whereas accused Harikrishno Sahu and Vinod Kumar Sahu were convicted for the offences punishable under Section 323/34 of the Indian Penal Code (two counts) and Section 304 Part-I of the Indian Penal Code.

11. Tularam Sahu (P.W.-2), Babulal Sahu (P.W.-3), Shyam Lal Sahu (P.W.-4), Yadram Sahu (P.W.-5), Ramlal Sahu (P.W.-6), Nageshwar Sahu (P.W.-8), Sukram Chauhan (P.W.-9), Sidar Singh Sidar (P.W.-10), Smt. Neelima Sahu (P.W.-11) and Pankaj Kumar Sahu (P.W.-21), in their examination-in-chief as well as in cross-examination, have stated that a village panchayat was convened in connection with a dispute relating to cattle. During the course of the said panchayat/meeting, a quarrel ensued between the complainant party and the accused/appellants' party, in which Ramlal Sahu and Yadram Sahu sustained simple injuries, whereas Kenvarbai sustained multiple injuries and subsequently succumbed to the same.

12. Dr. Ritesh Sen (P.W.-12), who conducted the post-mortem examination on the body of deceased Kenvarbai, found five external injuries along with multiple internal injuries. He opined that the cause of death was excessive hemorrhage resulting from severe head and brain injuries. The nature of death was homicidal. The post-mortem report has been exhibited as Ex. P/7.

13. The learned Trial Court upon meticulous appreciation of the oral and documentary evidence on record, observed that the names



of the other accused persons did not find mention in the Dehati Merg Intimation (Ex. P/6), Dehati Nalishi (Ex. P/3) and the First Information Report (Ex. P/15), and, after evaluating the testimonies of all the witnesses, rightly acquitted the said co-accused persons. The learned Trial Court further, on a comprehensive appreciation of the entire evidence on record, including the medical evidence, convicted the present appellants for the offences punishable under Sections 323/34 (two counts) and 304 Part-I of the Indian Penal Code.

14. In the matter of ***Kala Singh @ Gurnam Singh Vs. State of Punjab, (2021) 10 SCC 744, Hon'ble Supreme Court held that*** there was a sudden fight between the appellant Kala Singh and the deceased as the deceased had stolen a pigeon of the appellant and the co-accused (Kehar Singh) hit the deceased with a rod on the head resulting in his death. Co-accused was convicted under Section 302 and 201 of IPC whereas appellant was convicted under Section 302/34 and 201 of IPC and sentenced to life imprisonment and RI for three years respectively. In appeal, High Court having found that the scuffle had taken place on the spur of moment in a sudden fight in the heat of passion upon a sudden quarrel and as such, not a premeditated act, modified the conviction from 302 to 304 Part-I of IPC and imposed of 12 years' RI and fine of Rs.10,000/- with default sentence of six months.



The Hon'ble Supreme Court held that it was not a premeditated one and as there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, as such the High Court ought not to have convicted the appellant for the offence under Section 304 Part-I of the IPC and modifying the same into Section 304 Part-II of IPC, reduced the sentence from 12 years to 07 years' RI while maintaining the fine sentence imposed by the High Court.

15. This Court in the matter of ***Raijoram Kaudo Vs. State of CG, CRA No.1328/2015***, judgment dated **24th August, 2023**, where the appellant who was unhappy with the conduct of his wife as she used to steal Mahuwa from the houses of villagers for which he was feeling underestimated and humiliated, caused her death by strangulation in a sudden fight without premeditation, altered his conviction u/s 302 of IPC to 304 Part-II of IPC and looking to his period of detention i.e. more than 09 years, sentenced him to the said period.
16. It is evident from the record that a counter-case was also registered against the complainant party and that the incident occurred during a village meeting wherein a quarrel took place. Further, as per the testimony of Dr. Ritesh Sen (P.W.-12), he admitted in his cross-examination that Injury No. 1 could be caused by a fall on a hard surface.



17. In the matter of **Bishnuprasad Sarkar** (supra), the Hon'ble Supreme Court held in paras 9 and 10 as under:-

“9. The learned counsel appearing for the respondent, on the other hand, argued that the nature of injuries sustained by the deceased and the manner in which the incident had taken place did not justify the reduction in the sentence awarded to the appellants.

10. There is no evidence to suggest any premeditation on the part of the appellants to assault the deceased leave alone evidence to show that the assailants intended to kill the deceased. There was no previous enmity between the parties who were residents of the same locality except that there was a minor incident in which some hot words were exchanged between the deceased and Sudhir. Even on the following day i.e. on 22-5-2001 the incident near the drain involved the appellant Bishnu Sarkar and the complainant Debabrato Mazumder, the son of the deceased. It was only when the deceased noticed the incident and intervened to save the complainant, that a Madhab Sarkar started assaulting the deceased and inflicted injuries on his body that resulted in his death.”

18. Further in the matter of **Ram Autar** (supra), Hon'ble Apex Court held in paras 17 and 18 as under:-

“17. In the ultimate analysis, however, one cannot overlook the progression of events that occurred since the incident of



trespass of the cattle of the deceased in the fields of Suraj Bali and others leading to abuse and unpleasantness between them earlier in the day. The second bout of bickerings precipitated in the afternoon on the same day while the deceased, appellants and the co-accused were sitting in their respective compounds, abutting each other. The witnesses of the incident though, at the preliminary stages, did advise the deceased to go in and avoid a brewing confrontation, he obdurately refused to do so and stoked the growing indignation so much so that eventually he was shot at and also assaulted by the appellants and their companions. The materials on record do suggest that the deceased did also contribute to the escalating tension and in the process the accused persons jointly unleashed attack on him by lathis and also shot him. A sudden spurt of irreversible events thus got triggered thereby.

18. In the fact situation that developed in quick succession, we are of the comprehension that there was as such no premeditation or prior concert on the part of the accused persons to commit murder of Lalni. The incident happened on the spur of the moment and in an uncontrollable, embittered and agitated state of enragement, thus depriving the accused persons of their power of self-control. Though during the assaults, the accused persons were understandably aware of the likely results thereof, it is difficult to perceive that they had any common object of eliminating the deceased. This is more so as the evidence discloses that the appellant-accused, first



informant as well as the deceased did descend from a common ancestor and that their grandfathers were real brothers. The evidence demonstrates that the appellant-accused do not have any infamous criminal background as well. The incident had occurred in the year 1982 and as on date, more than three decades have passed.”

19. From the testimonies of prosecution witnesses, particularly P.W.-2 Tularam Sahu, P.W.-3 Babulal Sahu, P.W.-4 Shyamlal Sahu, P.W.-5 Yadram Sahu and P.W.-6 Ramlal Sahu, it stands established that the incident occurred during a village meeting convened in relation to an ongoing dispute between the parties. The occurrence was preceded by exchange of hot words and a sudden quarrel between the two groups. The evidence does not suggest any prior meeting of minds or pre-planned attack by the appellants. The medical evidence of Dr. Ritesh Sen (P.W.-12) shows that the deceased sustained multiple injuries and the cause of death was excessive hemorrhage due to head injury. However, in his cross-examination, the doctor admitted that one of the injuries could also be caused by a fall on a hard surface. This admission, read with the ocular evidence indicating a sudden scuffle, probabilises that the fatal injury occurred during a free fight and not as a result of a deliberate or targeted assault intended to cause death.

It is also relevant that a counter-case was registered against the complainant party, which further supports the defence version



that the occurrence was a mutual fight arising out of sudden provocation. The record does not disclose that the appellants were armed with any deadly weapons nor does it show that they inflicted repeated blows with an intention to ensure death of the deceased.

20. Applying the aforesaid legal principles to the facts of the present case, this Court is of the considered opinion that the prosecution has failed to establish beyond reasonable doubt that the appellants had the intention to cause death or to cause such bodily injury as was likely to cause death, which is a necessary ingredient of Section 304 Part-I IPC. Nevertheless, it is proved that the appellants participated in the assault and had knowledge that their act was likely to cause death. Accordingly, the conviction of the appellants under Section 304 Part-I IPC is unsustainable and deserves to be altered to one under Section 304 Part-II IPC.

21. Insofar as the question of sentence is concerned, the occurrence pertains to the year 2018 and the appeal has been pending since 2021. At the time of the incident, the appellants were young, aged about 23 and 28 years respectively. They have already undergone more than four years of incarceration during the period of investigation, trial and pendency of the present appeal. The appellants remained on bail during the trial as well as during the pendency of the appeal, and nothing has been brought on



record to show that they ever misused the liberty granted to them.

22. In such circumstances, this Court is of the considered view that the ends of justice would be adequately met if the appellants are sentenced to the period already undergone by them, while maintaining the fine imposed by the learned trial Court.

23. Consequently, while affirming the conviction of the appellants under Section 323 read with Section 34 of the IPC (two counts), the conviction under Section 304 Part-I IPC is altered to one under Section 304 Part-II IPC, and the sentence is modified to the period already undergone by the appellants. The fine amount shall remain intact.

24. The impugned judgment is, accordingly, modified to the aforesaid extent.

25. The appellants are reported to be on bail, therefore, their bail bonds shall remain in operation for a period of six months in view of provisions of Section 437A of CrPC.

26. The criminal appeal is thus allowed in part.

Sd/-
(Rajani Dubey)
JUDGE

Sd/-
(Radhakishan Agrawal)
JUDGE