



2026:CGHC:4101-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 810 of 2023

1 - Rajendra Kumar Sidar S/o Sethuram Sidar Aged About 28 Years R/o Village Chikhalraunda , Police Station - Jaijaipur, District : Janjgir-Champa, Chhattisgarh

... Appellant(s)

versus

1 - State Of Chhattisgarh Through The Station House Officer, Police Station - Dabhra, District Janjgir-Champa (Now District Sakti) Chhattisgarh.

... Respondent(s)

For Appellant(s) : Mr. Jai Kumar Dewangan, along with Ms. Dimple Dewangan, Advocate.

For Respondent/State : Mr. Shailendra Sharma, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice.

23/01/2026

1. This appeal has been filed under Section 374(2) of the Code of Criminal Procedure 1973, (*for short the, Cr.P.C.*) against the impugned judgment of conviction and sentence dated 10.03.2023



passed by learned First Additional Sessions Judge, Sakti, District Janjgir-Champa in Sessions Case No. 20/2021, whereby the appellant has been convicted and sentenced in the following manner:

Conviction	Sentence
U/s 450 of IPC	RI for 05 years and fine of Rs. 1000/-, in default of payment of fine 03 months additional RI.
U/s 302 of Indian Penal Code	For life imprisonment and fine of Rs. 2000/-, in default of payment of fine 06 months additional RI

2. Brief facts of the case are that on 04.05.2021, the complainant, Smt. Pili Bai Patel PW-1 lodged a report to the police that she is residing at village Thangan along with her husband, son and grandson. His son was engaged in selling Ayurvedic Medicine. The wife of the appellant also visited various places due to their business, and the accused suspected that his wife was having an extramarital affair with the deceased Hitendra Patel. On 04.05.2021, at about 04:00 pm, when his son was in his house, the appellant came into his house and gave a knife blow to his abdomen and fled away. From the injury, blood was coming out, and her son started struggling to live. With the help of a dial 112 vehicle, Hitendra was being taken to the Community Health Centre, Dabhra, where he was declared dead. Merg intimation Ex.P/5 was given by the Smt. Pili Bai Patel PW-1, and on her report, the FIR Ex.P/1, was registered against the appellant for



the offence under Section 302 and 450 of IPC. Inquest of the dead body of the deceased, Ex.P/6, was prepared in the presence of the witnesses. The dead body was sent for its post-mortem to the Community Health Centre, Dabhra, where PW-16 Dr. Krishna Sidar conducted a post-mortem of the dead body of the deceased and gave his report Ex.P/26. While conducting the post-mortem, the doctor found one stab wound on the left lumbur of abdomen, 1x1/2x4.5 inch. Inside the wound dark red colour, massive free blood present. Injuries mentioned on the abdomen are caused by a hard and sharp object. The nature is serious, time before 12 to 24 hours back at the time starts pm. Injuries are ante-mortem in nature, and opined that the immediate cause of death is cardiorespiratory arrest due to internal bleeding. The incident caused by a stab wound to the left lumbur abdomen. Nature of death: homicidal. Spot map Ex.P/2 was prepared by the Police, and Ex.P/3 was prepared by the Patwari. The appellant was arrested on 04.05.2021, and he too was sent for his medical examination to the Community Health Centre, Dabhra, where he was medically examined by Dr. Jai Agrawal, who found abrasion with bleeding on the head of the accused, which was simple in nature. Memorandum statement of the appellant Ex.P/8 was recorded, and based on his memorandum statement, one knife and a TVS Jupiter Scooty have been seized vide seizure memo Ex.P/9. The blood-stained and plain soil was also seized from the spot vide seizure memo Ex.P/10. The knife seized from the



appellant was sent for his query report to the doctor, who gave his report Ex.P/27 and opined that the injury found on the body of the deceased could have been caused by the seized knife, and the injury is sufficient to cause the death of the deceased. He referred the knife for its chemical examination for confirmation of the presence of blood. The knife, blood-stained and plain soil, clothes of the deceased were sent for chemical examination to Regional FSL, Bilaspur from where report Ex.P/23 was received and according to the FSL report except the plain soil, blood has been found on the other articles and human blood has been found on all the articles except the knife for the reason that the blood found on the knife was disintegrated.

3. Statement of the witnesses under Section 161 of Cr.P.C. has been recorded, and after completion of the usual investigation charge-sheet was filed before the learned Judicial Magistrate First Class, Dabhra, for the offence under Section 450 and 302 of IPC.
4. The case was committed to the learned trial Court for its trial. The learned trial Court has framed a charge against the appellant for the offence under Section 450 and 302 of IPC. The appellant denied the charge and claimed a trial.
5. In order to prove the charge against the appellant, the prosecution has examined as many as 16 witnesses. Statement of the appellant under Section 313 of Cr.P.C. has also been recorded in which he denied the circumstances that appear against him,



pleaded innocence and submitted that he has been falsely implicated in the offence.

6. After appreciation of oral as well as documentary evidence led by the parties, the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence, this appeal.
7. Learned counsel appearing for the appellant would submit that the prosecution has failed to prove its case beyond a reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made the basis to convict him of the offence in question. The alleged eye-witnesses are interested witnesses, and their evidence cannot be relied upon without corroboration from an independent witness. There is no independent witness in the case in support of the evidence of the complainant. The place where the deceased was present in the house and the place from where the eye-witnesses are said to have seen the incident are doubtful, as the place was not visible directly. He would further submit that the memorandum and seizure witnesses have also not supported the prosecution's case and the recovery of the knife from the appellant. The FSL report is also not conclusive as there is no human blood has been found on the said knife. Alternatively, he would submit that the offence is committed in the heat of passion and only one blow has been made by the appellant. He has not taken undue advantage and not acted in a cruel or unusual manner and therefore, the



offence, if any, does not travel beyond the scope of Section 304 of IPC and therefore, the conviction of the appellant may be altered to Section 304 of IPC and his sentence may be reduced for the period already undergone by him as the appellant has already remained in jail for about more than 04 years and 08 months.

8. On the other hand, learned counsel appearing for the Respondent/State opposes the submission made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond a reasonable doubt. But for minor omissions and contradictions, the evidence of the prosecution witnesses is reliable. The presence of eye-witnesses is natural as they are the family members of the deceased, and the incident occurred inside the house. The appellant came inside the house of the deceased armed with a knife and gave a blow to his abdomen, which itself shows his intention to commit the murder. A knife has been seized on the instance of the appellant, in which blood has been found in the FSL report. The eye-witnesses have duly alleged the appellant about his involvement in the offence in question, and thus there is sufficient overwhelming evidence against the appellant that he committed murder of the deceased, and there is no scope for interference, and his appeal is liable to be dismissed.
9. We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.



10. With respect to the homicidal death of the deceased, the eye-witness PW-1 Pili Bai Patel, who is the mother of the deceased, has deposed that on the date of the incident, when his son was in her house, the appellant came there armed with a knife and made a knife blow on her son's abdomen. Her son went in unconscious, and blood was coming out from his injuries. The appellant threatened her by showing a knife and fled. Her son was being taken to Hospital but he died on the way.
11. PW-2 is the daughter of the deceased. She stated in her evidence that on the date of the incident, when they were in their house, the appellant came inside the house and assaulted her father with a knife and showed the knife to her grandmother; he fled away. Her father was being taken to Hospital but he died.
12. PW-9 Nutan Kumar Patel is the son of the deceased. He too has supported the prosecution's case that the appellant gave a knife blow to his father, and when they tried to intervene, the appellant threatened them by showing the knife and fled. His father has died in the Hospital.
13. PW-16, Dr Krishna Sidar, who conducted the post-mortem of the dead body of the deceased, has stated in his deposition that on 05.05.2021, he conducted the post-mortem of the deceased Hitendra Kumar Patel and found one stab wound on the left lumbum of abdomen. Dark red colour, massive blood present in the injury and opined that the immediate cause of death is cardio-respiratory arrest due to internal bleeding. The cause is a stab



wound on the left lumbar abdomen, and the nature of death is homicidal. He also examined the knife, which was produced before him for its query report and opined that the injuries found on the body of the deceased could have been caused by the said knife. His post-mortem report is Ex.P/26, and the query report is Ex.P/27. In cross-examination, the defence could not bring any material which led this Court to draw an adverse inference that the death of the deceased was not by the abdominal stab wound but for some other reason. Thus, the death of the deceased, being homicidal in nature, has been proved by the prosecution.

14. So far as the involvement of the appellant in the offence in question is concerned, the prosecution proved the same by the evidence of eye-witnesses, PW-1, Smt. Pili Bai Patel, PW-2 Himadri Patel, and PW-9 Nutan Kumar Patel, who are the mother and children of the deceased. All three eye-witnesses have stated that at about 04:00 pm, when the deceased was in the house, the appellant came there armed with a knife and gave a knife blow to the deceased, by which he went unconscious, and blood was coming out from the injury. When they tried to intervene, the appellant threatened them by showing the knife and fled. The deceased was being taken to Hospital but he died due to injuries. The defence could not be able to extract any material from this cross-examination so that their evidence could be disbelieved. Their presence on the spot is quite natural, and their evidence is



corroborative with each other, and there are no material contradictions.

15. Further, the knife has been seized on the instance of the appellant, which has been proved by PW-4 Kamal Kishore Patel and Ram Kumar Patel, who are the memorandum and seizure witnesses and supported the prosecution case. The said knife was sent for its chemical examination to FSL, and blood was found on the said knife. Thus, the prosecution has proved its case beyond a reasonable doubt that the appellant is the author of the crime and he caused stab injury on the body of the deceased, by which he died, and he is the person involved in the offence in question.
16. The next question for consideration is, whether the case of the appellant is covered within Exception-4 to Section 300 IPC vis-a-vis culpable homicide not amounting to murder and his conviction can be converted to Section 304 Part-I or Part-II of the IPC, as submitted by the learned counsel for the appellant ?
17. The Supreme Court in the matter of ***Sukhbir Singh v. State of Haryana, reported in 2002 (3) SCC 327*** 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 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.”

18. The Supreme Court in the matter of ***Gurmukh Singh v. State of Haryana, 2009 (15) SCC 635***, 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 for its special perspective. The relevant factors are as under :

- (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.”

19. Likewise, in the matter of ***State Vs. Sanjeev Nanda, 2012 (8) SCC 450***, the Hon’ble Supreme Court has 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.

20. Further, the Supreme Court in the matter of **Arjun Vs. State of Chhattisgarh, 2017 (3) SCC 247**, 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 is it relevant who offered the provocation or started 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 :

“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”.

21. In the matter of **Arjun** (supra), the 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.



22. Further, the Supreme Court in the matter of ***Rambir Vs. State (NCT of Delhi), 2019 (6) SCC 122***, has laid down four ingredients 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.”

23. Reverting to the facts of the present case, it is quite vivid that on the date of the incident, when the deceased was in a house, the appellant came there armed with a knife and assaulted the deceased.
24. PW-1 in para 10 of her evidence admitted that they suspect that Hitendra Patel is having an illicit relationship with the wife of the appellant. PW-2, Himadri Patel, in para-3 of her evidence, has stated that at the time of the incident, the appellant was saying that due to him, his wife is not residing with him. PW-3, Meena Patel, the wife of the deceased have also stated in para 3 of her evidence that she also came to know that her husband was being assaulted by the appellant for the reason that he was having an illicit relationship with the wife of the appellant. PW-5 is the sister-in-law of the appellant have stated in para-2 of her evidence that the appellant suspected that his wife was having an illicit



relationship with Hitendra Patel. At the time of the incident, her sister was residing in her house and not residing with the appellant Rajendra. PW-6, the wife of the appellant, has also stated in her evidence that her husband was suspecting that she was having an illicit relationship with the deceased, though she denied the same. On the date of the incident, the deceased became furious and went to the house of the deceased and gave a knife blow to his body. From the evidence of PW-2, also when he said that due to him, his wife is not residing with him, shows his depression, and in such a condition, he assaulted the deceased. Had the appellant intended to kill the deceased, he would have made repeated blows. As per the evidence of eye-witnesses, he made only one blow on the abdomen and fled away. As the appellant was not acted in a cruel or unusual manner, the appellant did not have any intention to cause death of the deceased Hitendra Patel but by causing such injury he must have had the knowledge that such injury inflicted by him would likely to cause death of the deceased, and as such his case would fall within the purview of exception 4 of Section 300 of IPC as the act of the appellant herein completely satisfied the necessary ingredients of exception 4 to Section 300 of the IPC.

25. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid cases and the evidence of the eye-witnesses PW-1 Pili Bai Patel, PW-2 Himadri Patel and PW-9 Nutan Kumar Patel and also taking into consideration the evidence of other witnesses



with respect to the cause of furiousness of the appellant that he raised suspicion upon the deceased that he is having illicit relation with his wife and for that his wife is not residing with him, ends of justice would meet if the conviction of the appellant under Section 302 of IPC is altered to one under Section 304 Part-I of the IPC.

26. Accordingly, the conviction and sentence of the appellant under Section 302 of IPC is **set aside**, however, he is convicted under Section 304 Part-I of the IPC and sentenced to undergo RI for 10 years with a fine of Rs. 2,000/-. In default of payment of the fine, he shall further undergo RI for 02 months. The conviction and sentence of the appellant under Section 450 of the IPC are hereby maintained. Both sentences are directed to run concurrently.
27. The appellant is reported to have been in jail since 05.05.2021. He shall serve the remaining sentence as modified by this Court. He is entitled for set-off of his undergone period undergone during the trial as well as during the pendency of this appeal.
28. With the aforesaid modification/observation the appeal is **partly allowed**.
29. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services



Committee or the Supreme Court Legal Services Committee.

30. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Alok